A

DIGEST

OF

HINDU LAW

ON

CONTRACTS AND SUCCESSIONS;

WITH A COMMENTARY

BY

JAGANNÁT'HA TERCAPANCHÁNANA:

TRANSLATED FROM THE

ORIGINAL SANSCRIT.

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CHAPTER V.

ON EXCLUSION FROM PARTICIPATION.

SECTION I.

ON EXCLUSION FROM INHERITANCE.

CCCXIV.

AS a man would be drowned, who attempted to paſs deep water in a boat made of woven reeds, ſo does a father ſink in the gloom of death, who leaves only contemptible ſons.

CONSEQUENTLY he, who is averſe from performing conſtant and occaſional rites, does not benefit his father: hence he is not capable of inheriting the paternal eſtate.

CCCXV.

APASTAMBA:—No doubt, all the ſons, who are virtuous, take their ſhares; but him, who illegally acquires wealth, even though he be the firſt born, let the king declare incapable of inheriting.

WHO, though firſt born, illegally diſſipates* wealth: ſuch is the conſtruc-

* The ſame term is variouſly explained by the ſeveral commentators. I retain Sir William Jones's verſion of the text. T.

tion and ſenſe: "illegally" by gaming or the like: "incapable of inheriting;" capable of inheriting no more than the reſidue of a ſhare after deducting ſo much as has been diſſipated by him. Some thus expound the text.

The *Retnácara.*

CONSEQUENTLY *ſo much ſhall be deducted out of his ſhare, as has been* expended with no view to the ſupport of the family, to religious duties and the like. But, if more than the amount of his own ſhare have been expended, the law does not direct, that the exceſs ſhall be conſidered as a debt: it is fit, that he ſhould only be deprived of his ſhare.

A PUERILE author reverſes the reading; but to him, who acquires wealth by legal means, "an equal ſhare with his father ſhall be allotted". That reading, ſays JI'MU'TAVA'HANA, *is not traditional.*

OTHERS explain the term (*pratipádayati*), "acquires" or earns. Conſequently he, who follows an illegal mode of ſubſiſtence, through avidity for wealth, without the function of the law, ſhall be deprived of his ſhare. "Following an irregular profeſſion," in the text of GO'TAMA, ſignifies ſubſiſting by unlawful means.

CCCXVI.

GO'TAMA:—THOUGH ſon of a woman equal in claſs, *he, who follows an irregular profeſſion, does not take a ſhare of the inheritance,* according to ſome *lawgivers.*

CCCXVII.

MENU:—ALL thoſe brothers, who are addicted to any vice, loſe their title to the inheritance.

"ANY VICE;' *any forbidden acts, ſuch as ſlaughter or the like, and reprehenſible means of ſubſiſtence* Book II, Chap. IV, v. XX and XXVII). The virtual ſenſe of the text (Book II, Chap. IV, v. XXVII 2), ſay theſe lawyers, is that uſury, agriculture and commerce are honeſt profeſſions for a

Vaiſya;

Vaiśa; but, followed by a *Bráhmana* or a *Cshatriya*, partake of the quality of paſſion.

Of theſe two the preferable opinion may be determined by the *regular* ſenſe of the word *pratipádayati*. According to the beſt authors, the verb *pad*, preceded by *prati*, and augmented by the ſuffix *nyi*, is employed in the ſenſe of "give;" preceded by *ut*, it is uſed as ſignifying to generate or produce. By the word "though," in the text of GO'TAMA, it is intimated, "much leſs ſhall the ſon of a woman unequal in claſs *take a ſhare, if he follow an irregular profeſſion*:" "ſhare" muſt be ſupplied in the text.

By the expreſſion "even though he be the firſt born," the middlemoſt and the reſt are included in the text of APASTAMBA: an alternative, ſays the author of the *Prácaśa*, is deduced from a reference to the caſe of one, who is able to avoid illegal practices. Conſequently the expreſſion "according to ſome" denotes a contingency: and that contingency is thus ſettled; he, who can avoid irregular means of ſubſiſtence, ſhall take a ſhare; but if he do not avoid them, he ſhall not participate. GOYI'CHANDRA alſo affirms, that the expreſſion "according to ſome" denotes a double contingency, not a difference of opinion.

CULLU'CABHATTA expounds "addicted to any vice" (CCCXVII) devoted to gaming or the like. Others explain it 'inclined to diſſipate the 'wealth of the family.' JI'MU'TAVA'HANA interprets it 'averſe from per-'forming their father's obſequies and other acts of religion.' According to the opinion inſerted in the *Retnácara* as maintained by ſome lawyers, the precept for depriving a gameſter, or other vicious perſon, of his ſhare, muſt be underſtood as ſignifying the allotment of a ſhare diminiſhed by ſo much as has been diſſipated. According to other commentators, men addicted to gaming and the like are not deprived of their ſhares, but men who follow an illegal profeſſion. Such is the difference between theſe two opinions: but it muſt be noticed, that many authors acknowledge the excluſion of a man addicted to gaming and ſimilar vices.

CCCXVIII.

SANC'HA and LIC'HITA:—OF him, who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct.

"FORMALLY degraded," expelled by his kinſmen, with the ceremony of kicking down a water-pot,* for a crime *in the third degree*, ſuch as killing a *Cſhatriya without malice*, or the like.

The *Retnácara.*

JI'MU'TAVA'HANA explains "formally degraded," excluded from the joint libation of water. Both opinions coincide.

CCCXIX.

VR IHASPATI:—THOUGH born of a woman equal in claſs, one, who is not virtuous, ſhall have no claim to the paternal eſtate; it is ordained to devolve on thoſe learned prieſts, who offer the funeral cake to the deceaſed.†

2. A SON redeems his father from every debt whatſoever due to ſuperiour or inferiour beings; no advantage is therefore gained through one who neglects that duty.

3. WHAT can be done with that cow, which neither affords milk nor becomes pregnant? Of what uſe is that ſon, who is neither learned nor morally good?

4. A SON, who has no ſacred knowledge, nor courage, nor induſtry, nor devotion, nor liberality, and who obſerves not immemorial good cuſtoms, muſt be conſidered as ſimilar to urine and ordure.

"NOT virtuous" muſt be explained by the ſubſequent texts.

The *Retnácara.*

* See MENU, Chap. 11, v. 185. † Alſo cited at v. CCLXIV.

It conſequently ſignifies one deſtitute of good qualities, ſuch as *the willingneſs* to diſcharge the debts of the father and the like. "Not virtuous" is explained by RAGHUNANDANA, 'tainted with thoſe vices which are the 'reverſe of good qualities.' That is wrong; for the ſage, declaring uſeleſs a ſon devoid of good qualities, as deſcribed in the ſecond text (CCCXIX 2), intimates, that he is incapable of inheritance. A text of NA'REDA, bearing the ſame import, ſhall be cited.

By the word "though," the ſon of a woman unequal in claſs, and the ſubſtitute for a ſon, are aſſuredly excepted *in ſimilar circumſtances*. "Who offer the funeral cake *to the deceaſed*;" this phraſe *(tat pindadáh)* is expounded in the *Retnácara*, who give food and apparel to this man who is devoid of good qualities. The inheritance and other rights therefore devolve on learned prieſts: it is alſo mentioned, that food and apparel muſt be allowed to this ſon who is deſtitute of good qualities. "Learned prieſts" are mentioned illuſtratively; the term comprehends any perſon, who duly performs the obſequies and other conſtant and occaſional rites. RAGHUNANDANA explains the term *tat pindadáh*, 'who offer the funeral cake to the deceaſed.' According to the *Retnácara*, 'higheſt and loweſt debts' ſhould be expounded, "debts due to the ſuperiour beings, *ſuch as* deities, ſages and progenitors, and thoſe due to an inferiour being, namely man." According to HELA'YUDHA the ſame terms muſt be explained, debts to a creditor, which are naturally degrading. By declaring him to be uſeleſs, who neglects the duty mentioned in the text, that is, who wilfully omits to redeem his father, it is intimated, that he is incapable of inheritance; for the law declares him alone entitled to poſſeſs the heritage, who does confer benefits. The legiſlator mentions this, illuſtrating the principle by a ſimile (CCCXIX 3). "Learned" there ſignifies acquainted with right and wrong; "morally good" means practically virtuous. Here one, who is acquainted with right and wrong, is compared to a pregnant cow; one, who is practically virtuous, is compared to milch cattle. "Sacred knowledge, courage, and induſtry," (CCCXIX) ſeverally relate to the three firſt claſſes; "devotion" and the reſt concern all tribes. "Immemorial good cuſtoms;" the terms *may be explained* 'the 'practice of virtue to the utmoſt of his power.' "Muſt be conſidered as ſimilar to urine and ordure;" as urine and feces are ejected through organs *of action*,*

action,* so was he also ejected in the form of seminal juice. It follows therefore, that a son, even though free from vice, who neglects to fulfil prescribed duties to the utmost of his power, is excluded from participation: else it were vain to pronounce him useless. Vice *here* signifies malicious wrong to others and the like. *May* not the determinate sense of vice be here restricted to neglect of prescribed duties? Then the opinions of RAGHUNANDANA and the *Ratnácára* would accord. It should be noticed, that deficiency of good qualities, as a cause of exclusion, signifies the neglect of *fulfilling* indespensable duties at the proper time and place; the same term, as used in the chapter on sons of twelve descriptions, signifies neglect of voluntary acts of religion, which is a ground of inferiority in rank.

CCCXX.

NA'RADA:—A PROFESSED enemy to his own father, a degraded man, one deprived of virility, and a man formally expelled *by his kinsmen*, shall not inherit, though begotten by the deceased; much less, if begotten on his wife by a kinsman legally appointed:

2. One afflicted with an obstinate or an agonizing disease, and one insane, blind, or lame, from his birth, must be maintained by the family; but their sons may take the shares *of their parents*.

THE author of the *Pracáśa*, reading *upapátaci* (ſinner in the third degree) inſtead of *apapátrita* (formally expelled), explains it guilty of crimes in the third degree. JÍMÚTAVÁHANA and RAGHUNANDANA read *aupapática*; that likewiſe ſignifies guilty of crimes in the third degree. In the *Calpateru*, the text is read *apapátrita*. The excluſion of one formally expelled or degraded by his kinſmen is expreſsly ordained in the text of SANC'HA and LIC'HITA. A ſinner in the third degree is only excluded from participation, in the caſe of repeated offences: crimes are therefore mentioned in the plural number. Degradation for a ſingle offence only takes place in the caſe of more heinous crimes. "A profeſſed enemy to his own father;" this accords with VRÍHASPATI; for the excluſion of one, who wilfully omits the performance of obſequies and the like, is thus propounded. Though adorned with many virtues, ſuch as liberality and the like, he is excluded from participation, if he refuſe to perform obſequies and ſimilar acts of piety. "Inſane from his birth;" it is hereby intimated, that one, who ſubſequently becomes inſane from the pernicious power of mineral drugs or the like, is not excluded, any more than one who ſubſequently becomes blind or lame. In the *Vivá-da Chintámeni*, the text is read "idiot (*jaḍa*), inſane, blind or lame" inſtead of "inſane, blind or lame from his birth (*janma*):" "idiot" is there explained one who is incapable of diſcrimination. "But their ſons ſhall take the ſhares of their parents;" conſequently their ſons ſhall participate as grandſons; or if theſe be alſo ſimilarly circumſtanced, their grandſons ſhall take the ſhares, as great grandſons of the deceaſed: but, if theſe be likewiſe ſimilarly circumſtanced, no argument is hinted to prove the right of their ſons (*who are great great grandſons of the late proprietor*) to take the ſhares of their parents. However, the ſon of a degraded man ſhall not participate.

CCCXXI.

DE'VALA:—ON the death of a father *or other owner of property*, neither an impotent man, nor a perſon afflicted with elephantiaſis, nor a madman, nor an idiot, nor one *born* blind, nor one degraded for ſin, nor the iſſue of a degraded man, nor a hypocrite or impoſtor* ſhall take any ſhare of his heritage.

*The term is explained by ſome commentators "a fraudulent wearer of ſacred marks" T.

2. FOR

2. For ſuch men, except thoſe degraded, let food and clothes be provided; and let the ſons of ſuch, as have ſons, take the ſhares of their parents, if themſelves have no ſimilar diſability.

"On *the death of the father;*" *the meaning is,* even *on the death of* the father. "A hypocrite;" one, who rigidly practiſes auſterities with an intent to deceive.

The *Retnácara.*

Of courſe ſons have no right to the property of their father, it would therefore be ſuperfluous to ſay "on his death:" hence the word "even" is ſupplied.

A person afflicted with elephantiaſis, and who has not made expiation, *is excluded from* inheritance; but one, who has made atonement, ſhall take a ſhare, ſince the ſinful taint is removed; for that was the ſole cauſe of his excluſion. This is accurate; and in like manner a perſon afflicted with maraſmus is only excluded, if he have not made expiation. It ſhould not be argued, that the diſability of men tainted with ſin is ſhown by the mention of perſons degraded for their crimes: by the further mention of a "perſon afflicted with elephantiaſis," it is intimated, that the diſeaſe is, in its own nature, a cauſe of excluſion from inheritance. Raghunandana holds, that expiation for a man afflicted with elephantiaſis, or other ſimilar diſeaſe, is ordained for the purpoſe of enabling him to perform acts of religion ordained in the *Vêda;* by parity of reaſoning he becomes competent to inherit property, as well as to perform religious ceremonies: it is not found in any other caſe, that a ſon, competent to perform obſequies and other acts of religion, is not qualified to inherit. The leper is ſeparately mentioned to deny his right of inheritance; which might be ſuppoſed becauſe he is not a degraded perſon.

Although the ſinful taint be diminiſhed, is not a leper degraded, becauſe the *original* crime was heinous? It ſhould not be objected, that the body, in which the offence was committed, is alone tainted with ſin, and the occupant

cupant of that body is alone degraded; but the crime having been perpetrated in another body, the occupant of the preſent one is not degraded. There is no argument, by which this induction can be ſupported. To the queſtion propoſed, the anſwer is, degradation ſignifies that ſtate, which occaſions both diſability for acts of religion ordained in the *Véda*, and a *final* doom to miſery in another world; but leproſy does not occaſion evil deſtiny in another world, nor does it cauſe diſability for acts of religion: in fact, a man ſo tainted with ſin ought not to undertake a religious rite, although elephantiaſis and the like have not enſued.

Is not a known crime the ſole cauſe of diſqualification for acts of religion? and hence they may be duly performed by one who is not conſcious of a crime which he has fortuitouſly committed in his preſent exiſtence. Again; if leproſy be a cauſe of diſqualification for religious ceremonies, why ſhould it not occaſion diſability for inheritance? As for the aſſertion, that, ſince the injunction of penance would otherwiſe be fruitleſs, he becomes equally capable of poſſeſſing property and of performing acts of religion (for there are no grounds of preference;) that is not accurate: for nothing oppoſes the aſſertion, that penance is undertaken leſt leproſy or the like enſue in a future birth.

THE modern VA'CHESPATI BHATTA'CHA'RYA holds, that a crime in the firſt degree is inexpiable ſo far only as relates to the body, in which the crime was committed; accordingly the obſervation of RAGHUNANDANA is accurate, that, ſince the cremation of a huſband guilty, in his preſent ſtate, of ſlaying a prieſt, is forbidden, one guilty of that crime in a preceding ſtate is alone redeemed by his wife dying with him. If expiation were refuſed to all bodies occupied by one guilty of a crime in the firſt degree, then cremation would be denied to a man tainted with ſin, even though it were committed in a former birth; the obſervation of RAGHUNANDANA would be therefore inaccurate; and a huſband, guilty of ſlaying a prieſt *in a preceding ſtate*, could not be purified by his wife dying with him. It ſhould not be argued, that cremation is only permitted, when the degradation is unaſcertained, the crime committed in a preceding ſtate being unknown; but cremation is refuſed, when that is aſcertained from elephantiaſis or other token of

ſin. As in the caſe of defilement, ſo, in the preſent inſtance, there is no argument for requiring *the precious* aſcertainment *of the fact* it is not true, that if a man employ in the celebration of a ſacrifice, one who has committed a crime in the firſt degree which is unknown, a ſinful taint is not thereby contracted, for, when many perſons take a repaſt in company, it is directed by ſages that a line of ſeparation be drawn with water, ſand or the like, through fear of aſſociating with a degraded man Nor ſhould it be argued, that this is not RAGHUNANDANA's opinion, but his meaning is, that cremation is refuſed to one who is a known ſinner, and no ſinful taint is contracted, if a ſacrifice be performed by the intervention of one guilty of ſlaying a prieſt, but whoſe crime is unknown, the practice of drawing a line of ſeparation is founded on the apprehenſion of aſſociating with one who conceals a crime of which he is guilty. Were it ſo, the expreſſion "in a preceding ſtate" would be unmeaning As for the expoſition, which might be propoſed, "a crime committed in a preceding ſtate, which is concealed, is a ſin of a preceding ſtate, and one known in this life is a ſin of the preſent ſtate," that is inadmiſſible; for it would be wrong to attribute to an author an improper meaning ſo ill juſtified In like manner, adds VACHESPATI BHATTACHA'RYA, if the corpſe of one, who has committed a crime which is unknown be burnt, thoſe who burn the corpſe, muſt be acknowledged to be guilty of an offence, as they are, if they burn the corpſe of one who has concealed his ſin

* THIS again does not hold good, a thing cannot be juſtified on the ſole conſideration of any author's aſſertion, without *ſupport from* reaſoning, *or from* the *expreſs* text of a legiſlator, for the ſimple aſſertion of a commentator may be any how applied For inſtance a prieſt is a human being endued with ſtrength, he is not ſlain by the ſimple impoſition of hand or foot, without blow or wound, and that muſt be known hence, *to ſuppoſe an unknown offence*, it is neceſſary to revert to a former birth It ſhould not be objected, that no argument proves cremation to be forbidden then only when the ſin is known, and conſequently expiation is denied to that body alone by the occupant of which the crime was committed To ſecure the effect of dying with a huſband, namely atonement for the crime of one guilty of ſlaying a prieſt, as it is neceſſary (this being an occaſional rite) that the occaſion

of

of it be aſcertained, ſo likewiſe in a prohibited caſe, the cauſe, being aſcertained, ought to be conſidered as a ſufficient ground *for invalidating the act*. This really occurs in the caſe of one, who takes a repaſt on the eleventh day of the moon, not being aware of the date It ſhould not be argued that no ſin is committed *by ſuch unintentional breach of an enjoined faſt*. As merit is not *gained* by one, who abſtains from food on the night of SIVA,* without being aware *of that rigorous faſt*, ſo a forbidden act, being done, produces the ſin conſequent on ſuch act, although the cauſe *why it ſhould have been omitted* were unknown It is indeed declared, as an inference drawn from the texts of MENU and YAJNYAWALCYA, that, although a crime be unatoned, an act done ignorantly is valid, hence the cremation of one, whoſe crime was unknown, is valid, but thoſe, who burn his corpſe, contract a ſinful taint

MENU —THE gods declared three pure things peculiar to *Brahmanas*, what has been defiled without their knowledge; what, in caſes of doubt, they ſprinkle with water, and what they commend with their ſpeech.

YAJNYAWALCYA —WHAT is not known *to have been defiled*, is ever pure.

IF it be ſaid leproſy muſt alſo be affirmed to be a cauſe of diſability for performing acts of religion ordained in the *Veda*, to diſqualify one, who does not know, through his acquaintance with the law, that this leproſy proceeds from a crime formerly commited and, for the purpoſe of diſqualifying one who is ignorant of the law, it is not neceſſary, that ſome perſon ſhould tell him, "it is inferred from this leproſy, that a crime was committed by thee in a former ſtate," then the anſwer is, admitting that leproſy is alſo a cauſe of diſability, what difficulty follows? what prevents a ſin, aſcertained by leproſy or the like, becoming the cauſe of diſability for performing acts of religion ordained in the *Vêda*? VA'CHESPATI BHATTACHARYA, who contends, that atonement is denied to that body, in which a crime in the higheſt degree was committed, only admits, that a body infected with famous leproſy, which is a token of a heinous crime, cannot obtain atonement. *But*, if

* On the 14th lunar day of *Phalguna*

the

the ſinful taint be removed, that conſequence is obviated. The following text declares famous leproſy to be the worſt ſort.

CCCXXII.

Bhawiſhya purána.—HEAR, O prieſt! the enumeration *of various ſorts* of leproſy, the laſt worſt than the firſt; bliſters on the feet, a deformity in the generative organs,* cutaneous fiſſures, true elephantiaſis, ulcers, coppery blotches, black and eighthly white, leproſy:

3. Among theſe, that leper is moſt vile in reſpect of all religious acts, who is afflicted with ulcers on all his limbs, *eſpecially* on his temples, forehead and noſe;

4. When he dies, let his corpſe be caſt near a ſacred river or other holy place, or at the root of a ſacred tree; let not a funeral cake or libation of water be offered, nor his corpſe be burnt, nor obſequies be celebrated:

5. Should a man, through affection, burn the corpſe of a leper, who has been ſix, or even three months, infected with the diſeaſe, that man muſt perform the lunar penance of an anchoret.†

AMONG thoſe lepers of eight ſorts, he, who is incapacitated for all ſolemn rites, is deſcribed (this word muſt be ſupplied) as afflicted with ulcers in all his limbs, or on his temples, forehead, or noſe. Since this is merely illuſtrative, he, who is infected with that foul leproſy, which is attended with ulcers on any other part of the body, is abominated *and diſqualified* for all ſolemn rites. Or the term "on all his limbs" being employed by the ſame rule, by which two names for kine are uſed at once in a general and particular ſenſe, the meaning is "on any part of the body, whether

* See Menu, Chapter xi, v 49 *Dárcheraca*, the term, which occurs in the text, is explained as ſignifying the natural want of the foreſkin

† Menu, Chapter xi, v 219.

the

the temples and the reſt, or parts different therefrom' Or elſe the meaning may be, 'afflicted with ulcers on any one or more of all the parts 'of the body, or eſpecially with thoſe other ulcers called coppery, 'black, or white ſores, on any one of the parts ſpecified, namely the 'temples and the reſt he, who is afflicted with any one of theſe diſ-'eaſes, *is moſt abominated* " A leper, who has been ſix, or even three months, infected with the diſeaſe &c " according to the firſt opinion, if lepers die, who had been ſix months afflicted with *one of* the other ſeven ſorts, or three months infected with ſanious leproſy, their bodies ſhall not be burnt, and, *if they live*, they become incapable of inheritance Or the meaning is, 'after three months, if the ſanious leproſy ſpread over all 'the limbs, after ſix months, if it only invade the temples or the like.' Or the ſenſe may be, 'after ſix months, if the ſanious leproſy invade any 'part of the body in general, after three months, if it conſiſt in 'a coppery ſore or the like, which eſpecially attacks the temples and other 'parts mentioned *in the text*'

* It is ſaid, that, the ſinful taint being removed after penance performed, the degradation of the leper would be ſet aſide neither RAGHUNANDANA, nor SULAPANI, have inferred from the ſeparate mention of the leper, that his corpſe ſhall not be burnt, although he had performed penance. The unfitneſs for cremation after death being *thus* removed, he therefore becomes competent to perform acts of religion *during his life*, and, this being proved, his right of inheritance is likewiſe eſtabliſhed by parity of reaſoning and the leper is again expreſſly mentioned by the ſame rule, by which two names for kine are at once employed in a general and particular ſenſe, ſince his degradation can only be inferred *by logical reaſoning*, men of weak underſtanding would not readily apprehend it, the *leper is therefore ſeparately mentioned* to aſſiſt ready apprehenſion The ſame muſt therefore be underſtood in reſpect of obſtinate agonizing diſeaſes (CCCXX) The opinion of RAGHUNANDANA and the reſt cannot be impugned on the ſole ground of the leper being ſeparately named As for what *is affirmed*, that, although the ſinful taint proceed from the murder of a *prieſt* or other heinous crime, it is diminiſhed by long endurance, and *is* therefore no cauſe of degradation, and hence the leper is ſeparately mentioned, becauſe he cannot *be in*

cluded

cluded in the term "degraded man," (to which it should not be objected, that, although the sinful taint be diminished by long sufferance, the nature of the taint remains *unaltered*, and RAGHUNANDANA is accurate in admitting, that bodies of men, who had black teeth or other corporeal marks of sin, must not be burnt. Were it so, it would be necessary to perform the penance of twelve years *) that is wrong, for legislators have propounded penances *equivalent* to the sufferance of such pains, as would be produced by that sinful taint, and in the interval, when much has been already suffered, a penance equivalent to such part as remains to be endured. "Degraded man" must be explained "one who has done a criminal act" else, "since the issue of an outcast may be sufficiently described by the simple term "degraded," the expression "issue of a degraded man" would be superfluous. But this man (the leper) is not one who has done a criminal act; for it was not done by *him* in his present body. If it be argued, that disability must be affirmed of him, who is tainted with the sin consequent on that act, lest the offender become capable of possessing *inherited* property when two days have elapsed after the murder of the priest or other crime committed, since the act itself is not of long duration, then the son of the leper would be also disqualified. Therefore the occupant of the body, by which a criminal act was committed, is alone disqualified by reason of the sinful taint arising from an act of the body; and the leper is separately mentioned, to suggest disability so long as the sinful taint remains, although he occupy a different body. Then a man, who has black teeth or the like, would be capable of inheritance and so forth, even though penance have not been performed; and, if this be deemed admissible, one, who is afflicted with slight elephantiasis, being disqualified, *though he be* not a greater sinner than one who has black teeth, would not this be an unjust disparity? By the word leper must be understood one infected with the famous kind, a man afflicted with slight leprosy, and one who has black teeth and the like, retain their right of inheritance and so forth accordingly the man, who is infected with a particular sort of leprosy, being alone described in the *Bhavishya purána* as an abominated person (CCCXXII 3), the denial of cremation must be understood of him alone. It should not be objected, that a man infected with grievous leprosy is dis-

* Vide, Cap. III. s. 73.

qualified

qualified under the authority of the text, although he have performed penance, since no argument exists, by which it can be proved, that the term "a person afflicted with elephantiasis" (CCCXXI) bears the secondary sense of "tainted with sin" If one, who laboured under the full taint of sin, regain his rights when he has performed penance, and one, who labours under the remains of such sinful taint, be disqualified, although he have performed penance, the disparity would be unjust. Not the disease, but the sin alone, is the cause of disability. This is stated on the authority of the opinion delivered by VA'CHESPATI BHATTA'CHA'RYA

ACCORDING to RAGHUNANDANA, they, who have black teeth and the like, as well as he, who is afflicted with slight elephantiasis, (should penance be unperformed,) can neither be burnt *after their decease*, nor succeed to property *during their lives*, for these also are sinners in the first degree, and the text expresses,

CCCXXIII

Brahme purâna — THEY, who have committed crimes in the first degree, are considered as degraded persons.

WOULD not the son of a leper, born before the disease broke out, be disqualified as the issue of a degraded man? Say not, that is admissible; for it would be inconsistent with approved usage. Nor should it be affirmed, that in this place "degraded man" signifies one tainted with a sin in the first degree, but in the expression "issue of a degraded man" it signifies the occupant of that body whence the sinful act proceeded There is no argument on which various senses can be established for the word "degraded" twice used in the same sentence (CCCXXI). If this be proposed, the answer is, no, for in both instances the term degraded relates to the occupant of that body, whence the sinful act proceeded. For this reason only is the leper separately mentioned and thus, after premising degradation (CCCXXIII), the cremation of outcasts being forbidden in the *Brahme purâna* (CCCXXIV), the cremation of lepers is consistently forbidden in the *Bhawishya purâna* (CCCXXII), as they are outcasts Degradation there signifies the state of one guilty of a crime in the first degree and so forth. Consequently,

cremation

cremation and the like being allowed to one who has performed penance, ſince he is no longer an outcaſt, the performance of preſcribed acts of religion, ſuch as obſequies and the like, is alſo deduced; and that being proved, his right of inheritance is alſo eſtabliſhed.

CCCXXIV.

Brahme purána:—Of degraded perſons, there ſhall be no cremation, nor funeral ſacrifice, nor gathering of their bones.

By parity of reaſoning, ſhould not one, who has black teeth or the like, and by whom penance has not been performed, be incapable of inheritance but that is not declared by the text? His excluſion from inheritance is intimated by NA'REDA (CCCXX 2). SA'TA'TAPA has uſed the word "malady," which is ſynonymous with diſeaſe, as alſo ſignifying black teeth and other morbid changes.

CCCXXV.

SA'TA'TAPA:—The morbid mark, proceeding from a heinous crime, is reproduced in ſeven *ſucceſſive* births; *the right of inheritance* is obſtructed by malady; but that is removed by the firſt or common penance and the like; *

2. And ſo is leproſy, maraſmus, gonorrhœa and dyſentery.

Any mark, proceeding from a heinous crime, is thus deſcribed as malady or diſeaſe. VISHNU alſo mentions black teeth as the mark of a ſin in the firſt degree.

CCCXXVI.

VISHNU:—They, who have ſuffered the pains experienced in hell and have paſſed through the reptile ſtate, bear the marks *of their yet unexpiated crimes* in the human form; an atrocious ſinner becomes leprous; the ſlayer of a prieſt is

* *Criché'ra:* MENU, Ch. 11, v. 209 and 212, (ſee alſo 125). The term very frequently occurs in that chapter, and is tranſlated ſevere; but taken as the name of a particular form of penance, it ſeems to be the ſame with that of PRAJA'PATI.

afflicted

afflicted with marasmus; a drinker of spirits has black teeth; a stealer of gold has whitlows on his nails; the violator of his preceptor's *(guru)* bed has a deformity in the generative organs.

In the text of DE'VALA the word "elephantiasis" is illustrative of these *morbid charges*; for in texts, which will be quoted, it is expressed by the general term disease, or malady. Then a man afflicted by gonorrhœa, or dysentery, would be also disqualified? Gonorrhœa, dysentery and the rest, may also proceed from the pernicious effects of drugs; but, if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree, disability is admitted by the terms of the text of NA'REDA (CCCXX 2) It is the same in the case of one who becomes insane in the course of his life. It should not be objected, that the special mention of him, who is afflicted with ulcers (CCCXXII 3), would be superfluous. The distinction is this, men afflicted with very slight elephantiasis and the like are competent to perform the constant rites; but one infected with grievous leprosy is not capable of performing them.

NA'REDA. One degraded for sin is he who has slain priests, or committed *some other atrocious crime, and who has not performed penance; but on the contrary* is averse from it; for RAGHUNANDANA says, aversion from penance on the part of the fallen sinner contributes to the forfeiture of his right to his own property. His not being averse from penance contributes to his right in the paternal estate. But VA'CHESPATI BHATTA'CHA'RYA affirms, that "aversion from penance is no cause of forfeiting his right in his "own estate; penance, or other atonement, which legalizes his *claim to* pro- "perty, can only be performed with money begged during his fallen state "from his son or from some other person. It is not proper to affirm, that "his property in wealth acquired during his fallen state is forfeited by reason "of his degradation. A degraded sinner would be always compelled to rob "for his subsistence. However, should the son, or other person, take the "heritage and yet refuse to give money for the penance *to be performed*, he "ought to be compelled to give it. According to his opinion, the matter is not in this case regulated by aversion from penance.

"THE issue of a degraded man;" issue born after the commission of the act, which is punished by degradation; for this agrees with the text of VISHNU (CCCXXVII). A hypocrite *or impostor* is explained in the *Retnácara*, one who rigidly practises austerities with a fallacious intent.

CCCXXVII.

VISHNU, after premising the fallen sinner, the eunuch and the rest:—THE legitimate sons of these *are sharers of the patrimony*: but not the sons of a degraded man, born after the commission of the act, which is punished with degradation, nor those, who are procreated in the inverse order of the classes: their sons do not participate even in the property left by the paternal grandfather.

"OF these" persons abovementioned, the legitimate sons (*that is merely* illustrative, for the eunuch can have no son of his body) are sharers: the sense must be so completed. *The legislator excepts the offspring of an outcast;* "but not the sons of a degraded man &c." "Nor those, who are pro-

created

" what is inconſiſtent with duty," inſtead of *acarminah*, " thoſe who neglect their duties," according to his opinion, perſons addicted to gaming and the like are intended by that term " But not the degraded nor their iſſue," thus excluding outcaſts and their off pring from ſupplies even of food and apparel, it ſurely follows, that they are deprived of their ſhares

CCCXXIX

MENU.—EUNUCHS and outcaſts, perſons born blind or deaf, madmen, idiots, the dumb, and ſuch as have loſt the uſe of a limb, are excluded from a ſhare of the heritage,

2. But it is juſt, that the heir, who knows his duty, ſhould give all of them food and raiment *for life* without ſtint, according to the beſt of his power he, who gives them nothing, ſinks aſſuredly *to a region of puniſhment.*

3 IF the eunuch and the reſt ſhould at any time deſire to marry, *and if the wife of the eunuch ſhould raiſe up a ſon to him by a man legally appointed, that ſon and* the iſſue of ſuch, as have children, ſhall be capable of inheriting.

" PERSONS born blind by the mention of birth the legiſlator ſuggeſts the incurableneſs, not the origin, of the blindneſs ' Idiot devoid of knowledge of himſelf and others 'By the mention of " ſuch as have loſt the uſe of a limb,' perſons lame or the like, who are diſqualified for acts of religion ordained by revealed and memorial law, are ſuggeſted To all theſe namely to eunuchs and the reſt, food and raiment muſt be given without ſtint as long as they live " If the eunuch and the reſt " ſhould at any time deſire to marry ' this appoſition is in the form called *bahubri* not however connecting the attribute or propoſition with each member of the compound term, for the eunuch is incapable of procreating offſpring But the author of the *Prachá* conſiders ' impotence ' as determinately ſignifying incapacity of propagation, ariſing from a defect which may hereafter be removed he does not therefore acknowledge the appoſition to be the form of *bahubrihi*, which connects not the attribute

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rized (CCXXXI), * and BAUDHAYANA, has delivered a similar text (CCXXXVII) According to the author of the *Pracasa*, this law (CCCXXIX 3) regards one who becomes impotent in the course of his life That is questionable, for, as one, who becomes blind in the course of his life, ought to share the heritage, so ought one, who becomes impotent As it is recorded in the *Bharata*, that SICHANDINI, daughter of DRUPADA, did espouse a wife † so it may likewise happen, that an eunuch, mistaken for a man, may contract a marriage Impotence is of two kinds the impotence of one, who is deprived of the generative organ, and the incapacity of doing the virile act, although the generative organ exist. The last is described by CATYAYANA

CCCXXX

CATYAYANA —HE is called impotent, whose urine froths not, whose feces sink in water, and whose generative organ is deficient in erection or in seminal juices.

ALTHOUGH the eunuch and the rest should not marry, they may adopt children, such as sons given and the rest, and therefore the phrase "if they should desire to marry" is exceptionable If the degraded sinner have a wife married before he became an outcast, the son of his wife or other male child adopted during his degradation and, the son of his body procreated before it, may claim shares of the heritage, as appears from texts of DEVALA and others above cited

CCCXXXI

YAJNYAWALCYA —AN outcast, and his son, an eunuch, one lame, a madman, an idiot, one born blind, and he, who is afflicted by an incurable disease, must be maintained, without any allotment of shares.

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* The compiler has cited the commencement of another text in MENU's name I have made the reference to a similar text of MENU T

† DRUPADA during his wife's pregnancy, vowed he would kill the child should it prove female; however to save her first imposed SICHANDINI on her husband for a son A fable is told of her exchanging sex with a *Yacsha* or benevolent genius T

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The *Petnâcara*,

ſhe ſhould bear a ſon procreated by a kinſman, belongs to other ages: a reaſon is thereby aſſigned, why the widow ſhall not now inherit, if brothers be living.

THE ſucceſſion of the brother, though a wife ſurvive, and of the wife, though a brother ſurvive, has been propounded by various legiſlators: hence a contradiction *ariſes*. It ſhould not be argued, that they, who ordain the ſucceſſion of the brother in preference to the wife, direct a maintenance for the widow, hence texts, which ſuggeſt her right, muſt intend by implication the allotment of a maintenance, for thus the precepts mutually coincide. It is expreſsly declared, that a wife has a right to the whole property left by her huſband (CCCCVIII).

CCCCVI.

MENU:—IF brethren, once divided and living again together as parceners, make a ſecond partition, the ſhares muſt in that caſe be equal, and the firſt born ſhall have no right of deduction.

2. SHOULD the eldeſt or youngeſt of ſeveral brothers be deprived of his ſhare *by a civil death on his entrance into the fourth order*, or ſhould any one of them die, his *veſted intereſt in a* ſhare ſhall not wholly be loſt,

3. BUT, *if he leave neither ſon, nor wife, nor daughter, nor father, nor mother*, his uterine brothers and ſiſters, and ſuch brothers as were reunited after ſeparation, ſhall aſſemble and divide his ſhare equally.

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thers even though not reunited, and by his half brothers who were reunited with him, and a fourth part must be given, for their nuptials, to *such of* his uterine sisters, who had not already received a quarter of a share for that purpose and this allotment of a fourth part to a sister must be understood in the case, where the former distribution was made according to the number of mothers, each of whom had borne a son and a daughter Such being the sense, brethren, reunited after separation, having thus recovered the right of inheritance (CCCCXXVI), claim the estate of him, who leaves no male issue, in preference to the widow, but she would succeed to the estate of one, who left no male issue, and who was not reunited *with his brethren*.'

That is not acknowledged by Jimutavahana, for the text of Vrihaspati, expressed nearly in the same terms with that of Menu, shows that a brother, even though reunited, has no claim, if the wife survive, and Jimutavahana states many other objections, which are here omitted *to avoid prolixity*, for his purpose is attained by a single *chief* objection

CCCCVII

Vrihaspati.—If brothers, who have made a partition, become, through mutual affection, reunited, and *again* make a division of their joint-property, the first born has no right to a larger portion.

2. Should any one of them die, or any how seclude himself from the world, his share shall not be lost, but devolve on his uterine brother,

3. But she, who is his sister, is next entitled to take the share: this law concerns him, who leaves no issue, nor wife, nor father, *nor mother*.

Cullucabhatta also remarks on this text of Menu concerning a reunited brother, 'this must be considered as the rule, if he leave neither son, nor wife, nor father, nor mother.' But Vachespati misra affirms, that

all

all texts, which suggest the succession of others in preference to the wife, relate to the estate of an undivided brother, and the texts cited, which suggest her succession in preference to them, relate to the estate of a husband, who has made a partition with his brothers, for, if he die before the distribution, it cannot be affirmed, "this was the property of her husband, since all the brethren are joint owners of that wealth, the widow therefore can have no title" It should not be argued, that she may claim partition with the brothers of her husband and take his share A distribution among brethren being permitted after the death of both their parents, an express law shows, that a brother, his son, grandson, and the rest shall receive shares (LXXIX), but no law declares, that the wife *of a deceased brother shall in that case* take an allotment. Nor should it be argued, that texts, which propound the right of the widow, establish her participation, since they cannot be otherwise pertinent These texts may also relate to the inheritance of divided property, and may therefore be otherwise applied Accordingly VASISHT'HA has declared, that the widow of a childless brother may hold a share until she bear a son (CXVII) In fact, that allotment belongs to the *posthumous* son alone, but, if none be born, that share shall be received by, and distributed among, the brothers: such is the meaning, for the words, "until they bear sons," would be otherwise unmeaning

THIS again does not appear satisfactory, for the participation of the widow is deduced from the word "share" in the text of *Vriddha* MENU That term is not used in speaking of succession to an estate, which has been already divided, for it carries a reference to some entire property, and when this *share* is now inherited, there is no total *of which it is part*.

CCCCVIII

Vriddha MENU —A WIDOW, who has no male issue, who keeps the bed of her lord inviolate, and who strictly performs the duties of widowhood, shall alone offer the cake at his obsequies, and succeed to his whole share.

merely maintained by her huſband's brother and kinſmen, under the text of HA'RI'TA: but an adultreſs ſhall be baniſhed from the houſe, conformably with the precept of NA'REDA (CCCCV 2).

CCCCIX.

HA'RI'TA:—A WOMAN, widowed and young, is untractable; but ſeparate property muſt always be given to women, that they may paſs their deſtined life.

SUCCESSION to heritage, in right of good qualities only, does actually occur in the caſe of adopted ſons. Since a woman has not *yet* performed the duties of widowhood and the like, how can ſhe have a title to the inheritance immediately after *the* death *of her huſband?* She has an immediate title, becauſe ſhe is diſpoſed to perform thoſe duties; but afterwards, if her propenſities happen to change, ſhe forfeits the right, which ſhe had fully poſſeſſed. "Young" is mentioned in the text of HA'RI'TA, as indicating the poſſibility of adultery. By youth, *that* age is not ſtrictly meant; for any woman, though young, who is known to be well diſpoſed, has the right of inheritance by univerſal conſent. By the term "untractable" is ſuggeſted the neglect of the duties of widowhood. They conſiſt in refraining from the leaf of betel, from unction, from eating off veſſels of zinc (Book IV, v. CXXXIV), and from ſleeping on a bed (CXXXV) and ſo forth, and in ſtrict abſtinence on the eleventh lunar day, and in other acts of mortification.

CCCCX.

PAIT'HI'NASI:—THE effects of him, who leaves no male iſſue, go to his brother; on failure of brothers, his father and mother ſhall take *the heritage*, or his wife not diſtinguiſhed by good qualities, his diſtant kinſman bearing the ſame family name, his pupil, or a fellow ſtudent in theology.

THE wife not eldeſt, that is, *not ſenior by her virtue, or, in other words,* not diſtinguiſhed by good qualities, is heireſs on failure of the father and mother; ſuch is the ſenſe of the text: and that concerns wealth acquired

by the man himſelf without uſing the property of his ſire The claim of a brother is prior to that of a father or mother, becauſe he is firſt entitled to perform obſequies *for the deceaſed* Brothers of the whole and half blood ſucceed in order according to the benefits conferred by them, but, although they are conferred in unequal degrees, among whole brothers, by an elder, and by a younger one, ſtill, ſince there is no difference in the degree of benefit ariſing from the funeral cake offered by them in the double ſet of oblations, they do not ſucceed in order, but inherit jointly. The reaſon is this, an heir being ſought for the eſtate of one, who has left no male iſſue, his brothers and his parents being propoſed, both claims ſeem equal, (for theſe confer benefits by ſharing the funeral cake offered in the double ſet of oblations, and by giving birth to him, and his brothers do ſo by preſenting the ſingle and double ſets of oblations, which he was bound to offer, and by performing his obſequies,) admitting, therefore, the greater weight of rites relative to another world, his brothers ſhall inherit, like ſons and the reſt, before his father but his half brothers ſucceed after thoſe of the whole blood, becauſe they are not qualified to offer the *parvana* for his mother. Among uterine brothers, although an elder one be not competent to perform the obſequies of the deceaſed, if a younger brother exiſt, they have a joint title, becauſe age and qualities are not conſidered in *the* claims to *this* inheritance elſe the ſame rule would exiſt in the ſucceſſion of ſons, for the eldeſt performs the obſequies of his father. This ſhould alſo be underſtood in the caſe of half brothers The order, in which a father and mother claim ſucceſſion, ſhall be explained hereafter, and that order muſt be obſerved in this inſtance. But, if the property were acquired with ſupplies received from the father and the reſt, the claim of parents precedes even that of a brother, as ordained by YA'JNYAWALCYA, becauſe the benefit of aiding the acquiſition of wealth is greater *than any other*; and becauſe they are related *in the firſt degree* without an interval

On failure of theſe, "the wife, not diſtinguiſhed by good qualities, *ſhall inherit*" (CCCX). By this epithet, and under the text of YA'JNYAWALCYA (CCCXCVIII), ſhe, who performs all the preſcribed duties of widowhood, claims the ſucceſſion before a brother.

THE

The expreſſion "leaving no male iſſue," ſignifies 'leaving none male or femal, the laſt term being underſtood It conſequently ſignifies 'leaving no ſon, nor virtuous wife, nor daughter' In like manner, ſince the daugh er's ſon precedes a brother in offering the funeral cake in the double ſet of oblations, ſince he performs the obſequies of the deceaſed in preference to the collateral l indred, and ſince the text of VRĬHASPATI propounds his title, the brother can only claim the ſucceſſion after the daughter's ſon.

CCCCXI

VRĬHASPATI —As ſhe (the daughter) becomes owner of her father's eſtate, although kinſmen be living, ſo likewiſe her ſon is acknowledged to be the heir of the eſtate left by his mother and maternal grandfather.

Consequently the virtuous wife has the firſt claim to the wealth acquired by her huſband, who has left no male iſſue, next, the daughter, after her the ſon of a daughter, in default of him, the uterine brother, on failure of ſuch, one by a different mother, after theſe, the ſon of a whole brother, next, the ſon of a half brother, on failure of them, the mother, if ſhe be dead, the father, if both be deceaſed, the wife poſſeſſing few good qualities but a mere maintenance ſhall be given by the heir to a widow wholly deſtitute of virtue on failure of a wife poſſeſſing few good qualities the ſucceſſion devolves on diſtant kindred and the reſt. The order, in which daughters ſucceed, may be ſeen under the proper head, and the authority, on which a brother's ſon takes the heritage, will alſo be found in its place

This order of ſucceſſion being eſtabliſhed in the caſe of wealth acquired by a man himſelf, the very ſame ſequence ſhould be followed in the caſe of wealth acquired with ſupplies received from the father and the reſt *However*, the reverſed order of father and brother, founded on the diſtinction of *various* ſorts of property, ſhould not in that caſe be adopted, but the order of ſucceſſion, propounded by YAJNYAWALCYA and the reſt, muſt, in ſuch an inſtance, be followed, if the wealth were acquired with ſupplies received from

from the father and the reſt: ſince a wife, poſſeſſing few good qualities, is not then conſidered as conferring any benefits, the order ſhould not in that caſe be broken *to interpoſe her between the father and brother.* In whatever text it is ordained, that a mere competency for ſubſiſtence ſhall be given to the wife, it muſt be underſtood of one, devoid of good qualities. A wife poſſeſſing little virtue muſt likewiſe be ſupported by brothers and the reſt; for the proprietor was bound to maintain her. As for the text of SANC'HA, it muſt be conſidered as appoſite, when a father, or brother, takes the eſtate of his ſon, or brother. In the precept of DE'VALA (CCCCIV) order ſignifies the ſequence which is of general notoriety; and that is found in the texts of VISHNU and the reſt. CHANDE'SWARA thus expounds the law.

CCCCXII.

SANC'HA:—To the childleſs wives of brothers and of ſons, ſtrictly obſerving the conduct preſcribed, their ſpiritual parent muſt allot mere food, and old garments which are not tattered.

BUT ſome add by way of ſupplement to the opinion of CHANDE'SWARA, that food and apparel muſt be given, under the text of SANC'HA, to the childleſs widow of a ſon or brother, by her father in law, her brother in law and the reſt, who take the eſtate of her deceaſed lord: and ſuch nearly is the practice as obſerved by certain perſons. Thus he, who takes the eſtate of another, muſt give food to his widow and the reſt, whether ſhe be daughter in law or ſiſter in law *of the heir.* If he cannot ſupply her maintenance, he muſt not take the eſtate of the deceaſed, ſo long as ſuch a widow ſurvive. But the allotment of food and apparel to both theſe widows is not always indiſpenſable; for they are not enumerated in the text of MENU (Chap. VI, Sec. II, Art. I) *among perſons who muſt be maintained at all events.* However, they ſhould, if poſſible, be ſupported; for, ſince VRI'HASPATI, treating of the ſucceſſion of widows (CCCXCIX), directs that ſhe, who is firſt, by the text of MENU, in the order of ſucceſſion to the eſtate of him who leaves no male iſſue, ſhall honour learned and unprotected perſons and the reſt, the ſame ought likewiſe to be eſtabliſhed in the caſe of another heir.

THIS

THIS opinion of CHANDE'SWARA is ſtrictly conformable with the *letter of the* law, but it contradicts the opinion of JIMU'TAVA'HANA. On this head, the laſt mentioned author affirms, that the wife has a prior right, before brothers and the reſt, to the property of him, who leaves no male iſſue, for the texts of YA'JNYAWALCYA and VISHNU (CCCXCVIII and CCCCXVIII) intend that order of ſucceſſion But the word "women," in the text above cited (CCCCV 3), relates to females, other than the *legal* wife of the deceaſed and theſe are never entitled to the whole eſtate of one, who leaves no ſon, for it is forbidden to diſtribute wealth "among women, ig- "norant men, or ſuch as neglect their duties," and no ſpecial law ordains their ſu ceſſion as *it does* the inheritance of a wife and the reſt. But a woman *legally* eſpouſed, a daughter, and the reſt do inherit, by a ſpecial law, the eſtate of him, who leaves no male iſſue, for they are not barred by the general precept

CCCCXIII

WEALTH was conferred for the ſake of defraying ſacrifices; therefore diſtribute it among honeſt perſons, not among women, ignorant men, or ſuch as neglect their duties.*

ACCORDINGLY the king, who ſucceeds, on failure of all heirs, to the eſtate of any man except a *Brahmana*, muſt maintain the wife of the late proprietor, as ordained by NAREDA (CCCCV 3), for, in ſpeaking of a legal wife, the eldeſt is meant The ſeniority of wives is not regulated by age or good qualities, but by claſs (Book IV, v. XLVI) In ages, other than the *Calt*, marriages were contracted in various tribes, and ſometimes with women of the four claſſes, in ſuch a caſe, that wife, among three or four, who was equal in claſs with her huſband, had precedence Such is the order of ſeniority *by* claſs If a *Brahmana* have not eſpouſed a *Brahmani* woman, may not a *Cſhatriya*, or, on failure of her, a *Vaiſya* be his eldeſt wife? Therefore does the legiſlator add, "to all ſuch "married men, the wives of the ſame claſs only (not wives of a different

* Cited at length in other chapters but only partially quoted in this place I inſert it here, for a reaſon which will appear at the end of the firſt Section of Chapter IX

" claſs by any means) muſt perform the duty of perſonal attendance, and " the daily buſineſs relating to acts of religion" (Book IV, v. XLVII).

CCCCXIV.

MENU:—FOR he, who fooliſhly cauſes thoſe duties to be performed by any other than his wife of the ſame claſs, when ſhe is near at hand, has been immemorially conſidered as a mere *Chandála* begotten on a *Bráhmaní*.

BUT it is conſequently admitted, that, on failure of wives equal in claſs, thoſe duties may be performed by one of another tribe: *however*, thoſe acts, which may be done by his wife who ſprung from a different claſs, muſt only be performed by one belonging to the tribe next below him. VISHNU declares it (Book IV, v. XLIX). Hence a *Bráhmaní* wife *performs thoſe duties for a Bráhmana*; on failure of her, the *Cſhatriyá*, in the caſe of the utmoſt diſtreſs; but not his *Vaiſyí* or *Súdrá* wives, though actually eſpouſed: ſuch is the opinion of JI'MU'TAVA'HANA. Admitting, that *Vaiſyá* and *Súdrá* women may not aſſiſt him in the performance of religious duties, ſtill what can oppoſe their ſeniority on failure of other wives ſuperiour in claſs? This is objected by certain authors: ſtill, however, no difficulty enſues; for, if a *Bráhmana* have only eſpouſed women of the commercial and ſervile tribes, the *Vaiſyá*, but not the *Súdrá*, may in that caſe inherit as his wife. But, if women of the four claſſes have been eſpouſed, the *Cſhatriyá* and the reſt are entitled to maintenance only, becauſe they are not *legal* wives* *in a ſtrict ſenſe*. It ſhould not be objected, that ſtill the obligation on the king to maintain the inferiour wives of the proprietor is not appoſite, becauſe the *legal* wife alone does, in that caſe, inherit the eſtate. If ſhe be dead, or if the inheritance be refuſed by her, it may be neceſſary that *the other wives or concubines* ſhould be maintained by the daughter, brother in law, or other heir, or *laſtly* by the king. This may ſuffice on the ſubject of marriages contracted in the four claſſes; for they are now prohibited. It has been, however, noticed by JI'MU'TAVA'HANA to obviate the ſeeming contradiction between texts of legiſlators.

* Throughout this gloſs on v. CCCCV, *pati* is employed as ſignifying the firſt or legal wife; and *bhryá*, as ſignifying any other wife inferiour in rank. T.

CON-

CONSEQUENTLY the wife legally eſpouſed is ſole heireſs of the eſtate of her lord, whether ſeparated or undivided, whether reunited or remaining diſunited, although a daughter and the reſt be living. But "wife" *(bhárya)* in the text of DE'VALA ſignifies legal wife *(patní)*; for it relates to the ſpecial caſe *of the diſtinguiſhed one*. "Order," mentioned in that text (CCCCIV), alludes to the ſequence propounded by YA'JNYAWALCYA and the reſt. In the text of PAI'T'HI'NASI (CCCCX), the conſtruction muſt be taken from remote terms; the eldeſt wife, or the father or mother, ſhall take the eſtate of him, who leaves no male iſſue; on failure of them, it goes to the brother. This precept of law is thus propounded by him. In no text ordaining the allotment of a competent maintenance, does the term legal wife *(patní)* occur. RAGHUNANDANA and the reſt, following the opinion of HELA'YUDHA and the author of the *Calpateru*, thus reconcile the ſeeming contradiction. This alone is accurate.

IN following the opinion of CHANDE'SWARA, the practice of good men is infringed by admitting the prior claim of a brother; and that opinion contradicts the text of MENU (CCCCXXXIV). According to the interpretation of JI'MU'TAVA'HANA, if a man die leaving two wives equal in claſs, the eldeſt alone has a right to his eſtate; for, on the concurrent texts of DACSHA and VISHNU (Book IV, v. XLIX and LI), and by the law above cited, the term *legal* "wife" *(patní)* ſignifies her, who was married from a ſenſe of duty.

MADANAPA'LA holds generally, that, among wives of all tribes a diſtribution ſhall be made as among ſons of four claſſes. He adds, after the death of the woman, on failure of her own daughters and their male iſſue, the daughter of another wife of her huſband ſhall ſucceed. Hence it appears to be his opinion, that, after the death of a woman, her heirs ſhall inherit the property. According to the interpretation of RAGHUNANDANA, JI'MU'TAVA'HANA, MISRA and CHANDE'SWARA, the heirs of her huſband claim the inheritance, a text cited under one title being explained as carrying an alluſion to another; but, according to MADANAPA'LA, the ſame text being explained as confined to the title under which it is placed, the heirs of the wife take the heritage. This conciſe expoſition may ſuffice.

ON

On the point above noticed, the opinion of JI'MUTAVA'HANA cannot be ſet aſide by that of CHANDESWARA, becauſe they are equal in merit and defect. But ſome trifle muſt be given to diſloyal wives. In like manner, it appears from the condition "ſtrictly performing the duties of widowhood," that a *mere competency* for ſubſiſtence ſhall be allotted to women, who, though not guilty of adultery, do not ſtrictly perform the duties of widowhood. *Since a ſon devoid of good qualities* is declared incapable of inheriting (CCCXIX 3 and 4), ſurely the ſame ought to be eſtabliſhed, if a wife be deſtitute of virtue. But, if ſhe perform ſome of the duties of widowhood, ſhe has a title to the eſtate becauſe ſhe does not wholly fail in obſerving ſuch duties.

the natural father of thoſe children; in that event, ſhould any of thoſe ſons of the wife die leaving no male iſſue, the text of PA'IT'HI'NASI is applicable to the caſe: and, in that inſtance, "parents" muſt be underſtood to ſignify the father and mother of his natural mother. A wife not eldeſt is in every caſe debarred by a brother and the reſt. Or elſe this precept, "the effects *of the deceaſed* go to his brother," relates to property acquired with ſupplies from that kinſman's eſtate.

ACCORDING to the opinion of JI'MU'TAVA'HANA, ſince the wife has an intereſt in the wealth of her huſband during his life (CCCCXV), and ſince there is nothing to annul her property after his deceaſe, how can her huſband's brother and the reſt, *in any inſtance*, have a claim to the eſtate? To this it is anſwered, no; for it is eſtabliſhed that her property is actually loſt by the lapſe of her huſband's right. Accordingly the property of the wife is deveſted even when the effects are given away by her lord. Thoſe, who affirm, that the allotment of a ſhare *to the mother*, when partition is made among ſons,* is founded on her ownerſhip of the father's eſtate becauſe ſhe was his wife, accordingly contend, that a ſhare of the diſtributed wealth muſt be allotted to a wife of the father, whether ſhe have or have not a ſon, and whether partition be made before or after the death of the father. Accordingly BHAVADE'VA remarks on the ſucceſſion of a widow, that a wife had a claim on the eſtate of her lord even during his life, by the texts of DATTA (CCCCXV); and, after his death, ſhe ſhall have an equal ſhare with her ſon, by the ſame authority (*CCCCXV 2*). *Does it not conſequently appear, that, according* to the opinion of theſe lawyers, the wife of the proprietor ſhall receive a ſhare from his brother and the reſt, as ſhe would from his ſon?

CCCCXV.

DATTA:—WEALTH is common to the married pair.†

2. AFTER the death of her lord, the mother ſhall have an equal ſhare with her ſons.

* There has been ſingular inaccuracy in the quotation of texts concerning the ſhares of mothers; an important law, here quoted, is unnoticed by the compiler in its proper place;

"The mother of ſons, making a partition after the death of their father, ſhall alſo take a ſhare." T.

† I can no where find the text cited at full length; this much of it has been frequently quoted; but the author of it is here named for the firſt time: and he does *not* rank *among legiſlators*. T.

To the queſtion thus propoſed the anſwer is, the exigence of ſuch ſecondary property is ſupplied by allotting a competency for ſubſiſtence; but an equal ſhare is given by ſons becauſe ſhe is, in reſpect of them, moſt venerable.

But the property of her huſband, devolving on the wife *by the failure of nearer claimants*, deſcends after her death to the legal heirs of her huſband, on the concurrent opinion of many authors.

CCCCXVI.

VRĬHASPATI:—THOSE near or diſtant kinſmen, who, becoming her opponents, injure the property of a woman, let the king chaſtiſe with the puniſhment of a robber.

THE widow muſt defray the education and nuptials of an unmarried daughter. Such is the ſucceſſion of a wife to the eſtate of him who leaves no male iſſue.

II. ON failure of her, the eſtate deſcends to the daughter, by the text of YA'JNYAWALCYA (CCCXCVIII) and rule of VISHNU.

CCCCXVII.

VISHNU:—THE wealth of him, who leaves no male iſſue, goes to his wife; on failure of her, to his daughter; if ſhe be dead, to the ſon of a daughter; if there be no ſuch *grandſon*, to the father; in his default, to the mother; on failure of her, to the brother; if he be dead, to the brother's ſons: in default of theſe, to the remoter kinſman; on failure of kindred, to one deſcended from the original ſtock; if there be none ſuch, to the fellow ſtudent; on failure of him, to the king, except the property of a *Bráhmana*.*

MENU and VRĬHASPATI propound the daughter's claim (CCX and

* Partially quoted in this place. There are many various readings of this text. I here combine the readings moſt approved. T.

CCXXIV 1); the laſt named legiſlator declares what qualifications are required of a daughter, that ſhe may inherit the eſtate of her father (CCXXIV 2) The order of ſucceſſion, ſays BA'LARU'PA, is, in this caſe, the ſame which is ordained by the text of PARA'SARA

CCCCXVIII.

PARA'S'ARA:—THE unmarried daughter ſhall take the inheritance of the deceaſed, who left no male iſſue; and, on failure of her, the married daughter.

IT ſhould not be argued, that all this relates to the daughter who has been appointed to raiſe up iſſue for her father, and that the term "not appointed," in the text of VRIHASPATI (CCXXIV 2), relates to her who is ſelected by an implied intention without a formal declaration It is ordained by MENU, that, if a ſon exiſt, ſuch a daughter ſhall have an equal ſhare with him.

MISRA.

CONSEQUENTLY a daughter, though not appointed to raiſe up iſſue to her father, ſhall inherit, as appears from the terms, "him, who left no male iſſue" Are not thoſe terms employed to ſhow, that ſhe takes the whole eſtate of him, who leaves no ſon born in lawful wedlock, for the texts, relating to the ſucceſſion of a daughter, and of her ſon, are delivered by MENU among precepts relative to an appointed daughter? *Since he has* propounded no ſeparate law concerning the claim of a daughter, theſe texts muſt be taken as intending by implication the ſucceſſion of daughters in general It ſhould not be objected, that their right of inheritance is not ordained by codes of law The text of YA'JNYAWALCYA, expreſſing "this rule, concerning the heritage of him who has gone to heaven leaving no male iſſue, extends to all claſſes" (CCCXCVIII 2), declares the ſucceſſion of a daughter to the eſtate of him, who leaves no ſon begotten or adopted, neither one born in lawful wedlock, nor an appointed daughter or the like, and the text of VISHNU conveys the ſame implied ſenſe. According to the opinion of thoſe, who contend, that the ſon of the appointed daughter becomes the adoptive ſon of her father, there is no differ-

ence

ence whatſoever between an appointed daughter and any other female offspring Neither can the terms "leaving no male iſſue" ſignify 'leaving 'no ſon properly ſo called' Were it ſo, the wife and the reſt would inherit in order, although a ſon of the wife begotten by a kinſman, or other adoptive ſon exiſt Nor is that intended by lawgivers and commentators This conciſe expoſition may ſuffice

On failure of unmarried daughters, a married one claims the heritage by the text of PARASARA above cited (CCCCXVIII) Such is the notion of JIMUTAVAHANA and many other authors CHANDESWARA and the reſt do not contradict that opinion, it ſhould therefore be adopted A diſtinction is admitted in reſpect of married daughters ſhe, who may poſſibly have a ſon and ſhe, who actually has male iſſue ſhall alone take the inheritance, not ſhe, who is barren or widowed for the text of NAREDA ſhows, that daughters confer benefits through the means of their offspring, and precepts of MENU on the ſubject of inheritance declare the conferring of benefits to be the ſole ground on which reſts a title to take the heritage (CCCLXX and CCCCXXXIV)

CCCCXIX

NAREDA —IF there be no ſon, the daughter *is heireſs* by parity of reaſon, for ſhe keeps up the progeny, *ſince* a ſon and a daughter both continue the race of their father.

HERE progeny intends ſuch deſcendants as give the funeral cake, for he, who does not offer it, conferring no benefit, is in nothing different from one who is not a deſcendant, or who is the offspring of another man But a daughter's ſon is a giver of oblations, not his ſon, nor her daughter, for the funeral cake ſtops with him So JI'MUTAVAHANA, with whom DICSHITA concurs Conſequently, neither a daughter, whoſe ſon is dead, but who has a ſon's ſon, nor ſhe, who has female iſſue, inherit, though they were not barren

CCCCXX

DEVALA —To unmarried daughters a nuptial portion muſt be

be given out of the eſtate of the father; and his own daughter, lawfully begotten, ſhall take, like a ſon, the eſtate of him who leaves no male iſſue.

UNDER this text, the virgin daughter, by a woman equal in claſs and legally eſpouſed, can alone claim the inheritance; not a daughter by a woman not legally eſpouſed, nor one of a different claſs, nor one begotten on the wife by a kinſman, nor any other adoptive daughter; for ſons begotten on a wife by a kinſman, and other adoptive ſons, being noticed by the law, are alone legal iſſue; but ſuch daughters, being unnoticed in codes of law, are not ſo. The ſame diſtinction ſhould be alſo underſtood in reſpect of a married daughter, who would be debarred by an unmarried one.

ON this ſome lawyers remark, ſince the text of NA'REDA, which propounds *ſucceſſion in right of* benefits conferred, is not cited by RAGHUNANDANA under the head of ſucceſſion of female iſſue, therefore barren and widowed daughters inherit immediately after thoſe who have or may have ſons. This ſeems to be his opinion. It ſhould not be aſked, how can they claim the inheritance, ſince they confer no benefits? Were this a valid objection, it would contradict the aſſertion of JI'MU'TAVA'HANA and RAGHUNANDANA, when treating of ſucceſſion to the ſeveral property of a woman, that barren and widowed daughters ſucceed on failure of others, becauſe they alſo are iſſue *of the mother*. It ſhould not be argued, that they inherit as iſſue *of the mother*, becauſe a text, treating of ſucceſſion to the ſeveral property of a woman, expreſſes, "if a married woman leave no iſſue, her "huſband ſhall take her property." Since the words "daughters" and "married" occur under this head, both may inherit as married women, and as daughters. It ſhould not be objected, that the commentator has not expreſsly ſaid, that barren and widowed daughters may claim the heritage in this inſtance, as he has ſaid, that they ſucceed to the ſeveral property of their mother; he does not therefore admit the ſucceſſion of barren and widowed daughters. Neither does he, like JI'MU'TAVA'HANA, affirm, that they do not inherit *in certain caſes;* he may have left unnoticed the contrary aſſertion of a former author, although his own opinion *admits their ſucceſſion.*

VA'HANA has variouſly diſcuſſed the ſubject. Since the appointment of a daughter *to raiſe up iſſue for her father* is now forbidden, the argument is not here inſerted for fear of unneceſſarily enlarging the book, but it may be thus abridged; if the appointed daughter die having borne no ſon, her wealth ſhall be taken by her ſiſter and the reſt, but, if ſhe die after bearing a ſon ho deceaſed, it ſhall be inherited by her huſband and the reſt.

AFTER the death of a daughter, by whom ſhall property, which goes to her, be taken? To this JI'MU'TAVA'HANA replies, if ſhe was inveſted with the right while unmarried, and die after a ſubſequent marriage, it deſcends, on the failure of her, who was inveſted with the right, to thoſe married daughters and ſo forth, on whom it would have devolved upon the *original* failure of an unmarried daughter never inveſted with the right; it does not deſcend to her huſband and the reſt, for that *ſucceſſion* relates to the peculiar property of women. The meaning is, ſince it is ſhown by a text of law (CCCCLXXVII 2), that, on failure of a wife inveſted with the right *of ſucceſſion*, thoſe heirs of the former owner, who are declared entitled to the inheritance on *the original* failure of a wife never inveſted with the title, namely a daughter and the reſt, ſhall ſucceed to that property; the right of a daughter and of a daughter's ſon, who are inferiour to a wife, is therefore proved by the rule, *that the greater includes the leſs*, exemplified by the ſtaff and bread. Or wife is an indefinite term intending women in general; the ſame inference follows.

IF they be inferiour to a wife, as here affirmed, does it not follow, that the heirs of the original owner ſhall take the property after the death of the daughter's ſon, or even after the demiſe of the pupil and the reſt? [Neither is this conſiſtent with common ſenſe, nor acknowledged by numerous other authors, nor conformable with logical reaſoning; for no authentick text ordains it, and the ſon of a daughter's ſon ought not to be prevented from taking the eſtate of his father, *the inheritance of* which falls within the ſeven lawful means of acquiring wealth. Therefore does the commentator add, "or wife is an indefinite term" &c. Conſequently the making appoſite what was not pertinent in reſpect of wealth devolving on a wife and the reſt, is continued in the laſt part *of the gloſs*; apprehending a defect in the former, the commentator reconciles it in the latter expoſition.

To

To this *ſome* lawyers object the want of proof, that her own female iſſue, and the ſon of her ſiſter, and other heirs of a daughter, can only claim the peculiar property of the woman; for the texts of MENU and VR'IHASPATI (CCCCLXXXV and DXIII) ordain *generally* the ſucceſſion of daughters and the reſt to any property of their mother and ſo forth; and, although reſtricted by the precept of CA'TYA'YANA (CCCCLXXVII 2), which numerous authors conſider as relating to wealth which has devolved on the wife by failure of nearer heirs, ſtill there is nothing to reſtrict thoſe texts in other caſes. Again; if a daughter, a ſiſter's ſon and others can only take the peculiar property of a woman, then, ſhould wealth have been acquired by her mother, or by his mother's ſiſter and the reſt, in the practice of arts, commerce or the like, there would be no certainty who may claim it after the death of the acquirers. But this commentator admits the ſole right of a woman to that, which ſhe herſelf earns by arts or the like; for he explains the text of MENU (Book III, Chapter I, v. LII 2) as merely implying her ſubjection to control; and expounds "the dominion of her huſband,"

of a term are in many inſtances admitted according to the difference of the ſubject? Then what is the definition of the term "peculiar property of a woman?' If *it be explained* wealth *received* on her account, excepting that which has devolved on her by failure of nearer heirs; what is the uſe of that exception, or whence is it deduced? Again, the obſervation, "wife is an indefinite term," is impertinent, for the word wife is not contained in the text (CCCCLXXVII 2), and there is no proof that it ſhould be underſtood it is only inferred from the correlative term huſband It ſhould not be argued, that it does not follow from the inſertion of the correlative term, that the wife of the late proprietor is intended, for it is not ſo ſhown in the maxim, 'preſerving the bed of her lord inviolate, ſhe may enjoy the eſtate of her ſon,' nor in other inſtances neither can that be inferred from the words "gift *or heritage* (dáya) of her huſband," which occur in the preceding text (CCCCLXXVII 2), for thoſe terms, explained as ſignifying wealth given by her huſband, might be repeated *in interpreting the ſubſequent text, which would therefore relate to ſuch gifts of her huſband* of courſe the word wife muſt be underſtood *not inferred This ſhould not be argued*, for, if ſome term muſt be underſtood, it may be woman, or ſome other equivalent word, and the ſubject, governed by the active term "enjoy," being ſought, "gift of her huſband" muſt be repeated *from the preceding text*, or "eſtate of her huſband devolving on her" muſt be underſtood Again, *this text does* not convey a general maxim, that a "woman ſhall enjoy the heritage,' for ſiſters and and the reſt might *in that caſe* obtain the eſtate left by a brother it is merely an explanatory precept limiting *the right* to ſimple enjoyment, and this is founded on the text of another legiſlator expreſſing, "ſhe ſhall only "enjoy the eſtate, which has devolved on her by failure of nearer heirs, "and not give it away or ſell it" There is no proof, that wife here ſignifies woman in general If it be ſaid, a ſufficient argument may be drawn from this reaſoning, 'ſimple enjoyment being granted to a wife, who is firſt in the line of eventual ſucceſſion to property devolving *on collaterals* the ſame is alſo proper in the caſe of other female heirs,' the laſt diſtinction would be ſuperfluous, ſince it muſt be *equally* admitted, that a daughter's ſon, a pupil and the reſt are likewiſe incapable of giving away or ſelling the eſtate: the wife is not firſt in the eventual ſucceſſion

to an eſtate, but the ſon alone is *firſt heir*; the law knows not any diſtinction between eventual and direct ſucceſſion; this and the words, wealth devolving *on collaterals*, are uſed on ſome occaſions by certain authors for the ſake of their accepted ſenſe: however, the term direct *or lineal* ſucceſſion is employed for the purpoſe of *explaining, that the heir is ſubject to* the control of his own ſon and the reſt, in the diſpoſal of wealth which has devolved on him as ſon, grandſon, or remoter deſcendant *of the former proprietor*. Therefore wealth devolving on a ſon or other *lineal* ſucceſſor, and on a wife or *collateral* heir, muſt be called heritage, becauſe it is obtained in right of affinity or relation. Thus, if the maxim be eſtabliſhed, that a wife ſhall *ſimply* enjoy the eſtate, a queſtion ariſing on the expreſſion "after *demiſe*, the legal heirs ſhall take it;" after the death of the wife muſt be aſſumed, 'not after the *demiſe of any* woman.' This term here ſignifies a female human being; and wife denotes a married woman. By diſcuſſing the objections and anſwers on the inſertion of theſe ſeveral terms, *and the conſequent inferences*, the volume would be needleſsly enlarged: both *the queſtions and the anſwers* are therefore omitted. But, though not directly ſupported by the text of any legiſlator, or concurrence of any commentator, the opinion delivered by JI'MU'TAVA'HANA is reſpected by many lawyers. However, he only ſays, that wealth, which has devolved on a daughter, goes after her *death* to the heir of her father; he has not expreſsly affirmed, that a daughter ſhall not aliene an eſtate which has deſcended to her: but, if it be ſaid, the general *maxim, that, after a woman, the* legal heirs *of the former male proprietor* take the eſtate, cannot be deduced without eſtabliſhing a general rule, that a woman ſhall *merely* enjoy an eſtate which has devolved on her; it then follows, that ſuch is his meaning, but not otherwiſe.

If the daughters be numerous, a diſtribution is made. Such is their ſucceſſion.

III. On failure of female iſſue, the ſon of a daughter is heir, according to Ji'mu'tava'hana and Raghunandana. Bhavade'va, obſerving "daughters", expreſſed in the plural number in the text of Ya'jnyawalcya (CCCXCVIII), and inferring the implied comprehenſion of daughters both *fruitful and ſterile*, and of the daughter's ſon, becauſe the plural number would otherwiſe be unmeaning, alſo *admits this ſucceſſion*. The reaſoning, approved by Ji'mu'tava'hana, is pertinent on this interpretation; for he pronounces both daughters capable of inheritance. The word, taken in a ſecondary ſenſe, here intends both a daughter and her male offspring; as ſon, in the text of Ya'jnyawalcya (CCCXCVIII 2), ſignifies *real iſſue*, *that is*, a ſon, a ſon's ſon, and the ſon of ſuch a grandſon. The ſenſe is the ſame in the text of De'vala (CCCCIV). But the reading of the rule of Vishnu, immediately after the words 'on failure of her, to the daughter,' "if ſhe be dead, to the ſon of a daughter" (CCCCXVII); is not acknowledged by Ji'mu'tava'hana; for he has not cited that part of the rule, under the head of ſucceſſion of a daughter's ſon. That reading is approved by Bhavade'va. But the text of Vishnu, cited by Go'vinda ra'ja, is univerſally acknowledged to be ſufficient proof of the right of a daughter's ſon.

CCCCXXI.

Vishnu:—On failure of ſons, and of their male iſſue, the ſons of daughters ſhall obtain the property; for the male offspring of a ſon and of a daughter are equally qualified to perform obſequies for men of all claſſes.

Chande'swara alſo ſuggeſts the title of a daughter's ſon in preference to brothers, by citing the text of Vrihaspati, with theſe words premiſed, 'immediately after a daughter, and the ſon of a daughter.'

CCCCXXII.

Vrihaspati:—On failure of them, uterine brothers, and ſons

ſons of brothers, kinſmen bearing the ſame family name, pupils, and learned prieſts, are entitled to poſſeſs the eſtate.

FROM the difference of benefits conferred, and on the reaſon of the law, *his title ought to take effect* even before that of parents. The benefit conferred conſiſts in the oblation of a funeral cake to the proprietor by the ſon of his daughter (CV). In reſpect of another world, the benefit conferred by parents conſiſts in their ſharing the funeral cake which ſhould have been offered by the proprietor; but, in ſucceſſion to heritage, procreation appears to conſtitute a ſuperiour claim, compared with the acceptance of the funeral cake; and the oblation of it *does ſo, when* compared with procreation; for it is ſhown, that a ſon and the reſt take the heritage, although a father, or other anceſtor, be living.

" ON failure of them," that is, in default of a daughter and of a daughter's ſon, mentioned in preceding texts, " brothers" are the heirs. Such is the meaning; and this ſuppoſes the failure of parents, as will be hereafter explained. The preceding texts are two, one of VRĪHASPATI quoted in a former chapter (v. CCXXIV 2) and another (CCCGXI) cited by BHO'JADE'VA with theſe words premiſed, " VRĪHASPATI, on the ſucceſſion of a daughter who is, or is not, appointed *to raiſe up iſſue to her father.*"

THEN the title of a ſon's grandſon, whether in the male, or female line, may be ſuppoſed to precede that of both parents, by parity of reaſoning, and becauſe the text of VRĬHASPATI is nothing to the purpoſe. No; for this only declares the right of inheritance founded ſolely on benefits conferred; and the precept of VISHNU, cited by GO'VINDA RA'JA (CCCCXXI), is the ground on which reſts the title of a daughter's ſon; and it is declared that he confers benefits (CV). It ſhould not be argued, that the text of VISHNU relates to the ſon of an appointed daughter. The terms, "who leaves no ſon nor ſon's ſon" would be inexplicable. It cannot be true, that the ſon of an appointed daughter, though acknowledged to be a ſon's ſon in contemplation of law, claims the eſtate after the iſſue of a ſon begotten in lawful wedlock; for it is eſtabliſhed, that his mother has a ſhare *of the eſtate* at the ſame time with the ſon of the body (CCVI).

THUS the grandſons of a ſon, both in the male and female line, are not comprehended in the texts of YA'JNYAWALCYA and the reſt, by taking the terms *of the precepts* in a ſecondary ſenſe. Accordingly no ancient author has aſſerted the title of both to take the heritage.

AS for the remark, that the texts of MENU, which are cited by JI'MU'TAVA'HANA to prove the right of a daughter's ſon (CCXX *γ* & *δ* & CCVII), relate to the ſon of an appointed daughter, becauſe ſhe is mentioned in the context; the right of a grandſon in the female line muſt nevertheleſs be ſomehow deduced from the implied ſenſe of theſe texts, to obviate diſparagement of the legiſlator, ſince it has not been ſeparately declared by MENU; like the expreſſion "the ſun is ſet" in ſpeaking of ablutions at twilight, *and of other duties to be performed at the cloſe of the day.*

THE learned do not poſitively hold, that, after the death of a daughter's ſon, the heirs of his maternal grandfather ſhall take the wealth which had devolved on him; but his ſon or other heir ſhall alone take that property.

AGAIN; if daughter's ſons be numerous, a diſtribution muſt be made. In that caſe, if there be two ſons of one daughter and three of another, five equal ſhares muſt be allotted; they ſhall not firſt divide the eſtate into

two parts, and afterwards allot one ſhare to each ſon · for ſuch a mode of diſtribution is only ordained in partition among the ſons of ſons, and the reaſoning is not equal, for a ſon's ſon, whoſe own father is dead, receives a ſhare from his uncle, but the daughter's ſon, whoſe mother is deceaſed, does not receive a ſhare from his mother's ſiſter.

As the daughter, begotten by a man himſelf on his wedded wife equal in claſs, is alone heireſs of her father's eſtate by the text of DE'VALA (CCCCXX), ſo the ſon of ſuch a daughter alone ſucceeds, as grandſon, to the eſtate of his maternal grandfather. This alſo ſhould be underſtood From the expreſſion, "who leaves no ſon," it appears, that, on failure of appointed daughters, the right devolves on one, who has not been yet given in marriage, and hence alſo it muſt be underſtood, that the ſon of any daughter, though *ſhe were* not appointed to raiſe up iſſue to her father, is heir.

But ſome lawyers contend, that a daughter's ſon can *only* claim the ſucceſſion, on failure of all the heirs enumerated, *from the wife* to the king (CCCXCVIII), or, ſince there can hardly be a failure of the ſovereign, in default of all thoſe heirs preceding him That is wrong; for, immediately after *mentioning* the daughter's ſon, follows the text of VRĬHASPATI, "on "failure of him, brothers &c" (CCCCXXII), and he does confer benefits. MADANAPA'LA alſo affirms the ſucceſſion of a grandſon in the female line, immediately after a daughter The right of inheritance does not ſolely follow the benefits conferred.

MISRA conſiders the texts of VRĬHASPATI and the reſt as relating to the ſon of an appointed daughter, and he explains the precept of VISHNU alſo (CCCCXXI) as relating to the ſon of an appointed daughter and as intended to authorize his ſucceſſion to the whole eſtate, like the text "all theſe "adopted ſons are pronounced heirs of a man who has no ſon by himſelf "begotten" (CXC 3)

But GOVINDA RA'JA contends, that the claim of a grandſon in the female line precedes even that of a daughter. It is wrong, for this grandſon is ſecondary in compariſon with the daughter, ſince he becomes the oſ-

ſpring

ſpring *of his grandſire* through her; and her prior right is proved, becauſe VRĬHASPATI compares her ſon's claim to her own (CCCCXI).

ON the death of a daughter's ſon, who has received the heritage of his maternal grandfather, his own ſon claims the eſtate, becauſe it had become the property of his father, and becauſe no expreſs law reſiſts his right This ſhould be noticed. Such is the ſucceſſion of a daughter's ſon.

IV On failure of them, the mother is heireſs by the text of YA'JNYAWALCYA (CCCXCVIII) thus the *Retnácara* and *Chintámen*. It ſhould not be argued, becauſe the term "both parents" ſignifies father and mother, that both ſhall inherit jointly The text of VISHNU propounds their ſucceſſive rights, "on failure of her, *(namely, the widow of him who dies leaving no male iſſue,) the wealth* goes to his daughter, if ſhe be dead *(and leave no ſon)*, to the father, in his default, to the mother" (CCCCXVII) Accordingly VRĬHASPATI propounds the ſucceſſion of the mother without reference to the father

CCCCXXIII.

VRIHASPATI —THE mother muſt be conſidered as heireſs of her ſon, who dies leaving neither wife nor male iſſue; or, with her conſent, the brother *may be heir.*

HERE "with conſent' ſignifies with the acquieſcence of the mother But the *Parijata* expreſſes, the term is illuſtrative, comprehending the father the meaning therefore is, 'with conſent of both parents' Of what uſe is the ſanction of the father, for the ſame effect follows the aſſent of the mother, who had a right to the ſucceſſion? That is wrong, for indirect acquieſcence is here meant which may be expreſſed in theſe or other words, "I take it not' there is no occaſion to ſuppoſe a *formal* declaration of conſent in theſe words 'do you take it"

MENU alſo declares, that the mother inherits (CCCCXXIV) The ſucceſſion of the father on failure of her is intended by YA'JNYAWALCYA, as appears from his precept, and from the texts of VISHNU (CCCCXVII)

and

A MOTHER ſurpaſſes a thouſand fathers, for ſhe bears and nouriſhes the child in her womb; therefore is a mother moſt venerable.

IF the veneration due to her exceed the reſpect due to a father a thouſand fold, how can the text, cited from the *Purána* by MA'DHAVA'CHA'RYA, be relevant?

BY law the father and the mother are two reverend parents of a man in this world; however adorable *the goddeſs of* the earth, a mother is *ſtill* more venerable:

2. But, of thoſe two, the father is preeminent, becauſe the ſeed is chiefly conſidered; on failure of him, the mother *is moſt revered;* after her, the eldeſt *brother.*

HE himſelf thus reconciles the ſeeming contradiction; this relates to a father, who gives *inſtruction to his ſon in* the *whole Véda*, after performing the ceremonies on conception and all other holy rites which perfect the twice-born man: otherwiſe the mother is moſt venerable. Accordingly the text of MENU is alſo pertinent.

MENU:—A MERE *áchárya*, or *a teacher of the* gáyatri *only*, ſurpaſſes ten *upádhyáyas*; a father, a hundred ſuch *ácháryas*; and a mother, a thouſand natural fathers.

HE, who, for his livelihood, gives inſtruction in a part only of the *Veda* or in grammar and other *védangas* and the like, is an *upádhyáya* or ſublecturer, he, who girds the pupil with the ſacrificial cord, and inſtructs him in the whole *Veda*, with the law of ſacrifice, and the myſteries or ſacred *upaniſhads*, is an *achárya*. So MA'DHAVA'CHA'RYA following the text of MENU.*

VYA'SA:—TEN months a mother bore her infant in her

* Chapter 2, v 140 and 141.

womb, ſuffering extreme anguiſh; fainting with travail and various pangs, ſhe brought forth her child;

2. Loving her ſons more than her life, the tender mother is *juſtly* revered: who could recite all her merits, even though he ſpoke a hundred years?

By citing other texts from the *Puranas*, the volume would be unneceſſarily ſwelled, for this reaſon they are omitted. The ſeeming difficulty is thus reconciled, title to reſpect is no cauſe of inheritance were it ſo, who could take the eſtate, while both parents exiſt? But benefits conferred by his own act, and near relation by the funeral cake, *are the grounds, on which reſts the claim of an heir* now the father is ſuperiour by the benefits, which he confers therefore he has the right of ſucceſſion even though the mother be living, and the reading approved by Ji mu tava'hana muſt be followed in the text of Vishnu (CCCCXVII), for Yajnyawalcya declares, "If two texts differ, reaſon, *or that, which it beſt ſupports*, muſt in practice prevail, when the reaſon of the law can be *ſhewn*"

But other lawyers argue, if the eſtate of a ſon devolve on his mother, while the father lives, ſtill the latter has the ſole right to it, for it is not her excluſive property, being different from gifts received before the nuptial fire, or at the bridal proceſſion, or the like, and, while her huſband lives, nothing is acknowledged to be her excluſive property, except that, which was given to her.

The father is heir on failure of a daughter's ſon, and the mother, in default of the father the opinion of Ji'mu tava'hana and the reſt is reſpected by many lawyers as that which ſhould be now followed in practice

After the death of a mother, who has inherited the eſtate of her ſon, the heirs of her peculiar property ſhall not take the ſucceſſion, but the heirs of the ſon So Ji'mu tava'hana It ſhall not be aliened by the mother in her life time this alſo is affirmed by the learned, to be the opinion of Ji'mu'tava'hana Misra alſo aſſerts, that ſhe has no power to give away, or otherwiſe

otherwiſe aliene, property, which devolved on her *by failure of nearer heirs.* This lawyers affirm *to be a ſettled rule.*

V. On failure of the mother, brothers *take the eſtate,* by the texts of Ya'jnyawalcya, Vishnu, Vrihaspati, Menu, Go'tama (who uſes the word eldeſt as an illuſtrative term intending all brothers), De'vala and Ca'tya'yana (CCCXCVIII, CCCCXVII, CCCCXXII, CCXXIII, CCCCIV & CCCCXXV).

Go'tama:—The wealth of deceaſed brothers goes to the eldeſt *and the reſt.*

CCCCXXV.

Ca'tya'yana:—On failure of male iſſue, the father ſhall take the eſtate acquired by his ſon after partition, or the brother, or the natural mother, or the paternal grandmother, in regular order.

Here the order of ſucceſſion, to which the texts of De'vala and Ca'tya'yana allude, follows *the precepts of* Ya'jnyawalcya and the reſt. Such is the opinion of Ji'mu'tava'hana and others; Chande'swara alſo muſt be underſtood as aſſenting to that opinion: but Misra, in expounding the text of Ca'tya'yana, alleges a two fold eſtabliſhed caſe; the father ſhall inherit what had been acquired by him, and the brother and the reſt ſhall ſucceed to that, which had been gained by a collateral relation. On his interpretation it muſt be inquired, what ſhall become of property inherited from anceſtors and ſo forth. Chande'swara infers from a text above cited (CCCCX), that, on failure of a wife diſtinguiſhed by good qualities, of a daughter, and of a daughter's ſon, the brother is firſt heir of property, which he, who leaves no male iſſue, had himſelf acquired: in default of brothers, both parents; or, if thoſe be dead the wife not diſtinguiſhed by good qualities and ſo forth. But Ji'mu'tava'hana and the reſt affirm, that, on failure of the wife, daughter, and daughter's ſon, the father, mother, and brothers, in order, take every ſort of property.

In the text of YA'JNYAWALCYA, the term being exhibited in the plural number, it is thereby ſuggeſted, that brothers variouſly diſtinguiſhed have a right of inheritance. Although their relation might be conſidered as ſingle, in as much as it is the affinity of a brother, it is nevertheleſs diſtinguiſhed into many ſorts, to intimate their ſucceſſive titles. That order of ſucceſſion is ſubjoined, in the firſt place, a reunited brother by the ſame mother ſhall take the eſtate of one, who leaves no male iſſue; on failure of ſuch, the uterine brother not reunited, and the reunited one by a different mother, have equal claims, in default of them, the half brother who is not reunited. So RAGHUNANDANA and JI'MU'TAVA'HANA. The proofs are ſubjoined.

JI'MU'TAVA'HANA *expreſsly* ſays, in collateral ſucceſſion, the *uterine* brother has the firſt claim, as declared by the text, "an uterine brother ſhall tranſmit and receive the heritage to and from his uterine brother, *as he happens to live or die.*"

CCCCXXVI.*

YA'JNYAWALCYA:—Two brothers, who, after their foriſfamiliation, have both reunited themſelves to the family of their father, ſhall reciprocally tranſmit and receive their eſtates, as they happen to live or die; and ſo ſhall two uterine brothers.*

CONSEQUENTLY YA'JNYAWALCYA, having propounded in general terms the ſucceſſion of brothers, whether by different mothers, or by the ſame, whether reunited or not (CCCXCVIII), ſubjoins this text for the ſake of exhibiting a diſtinction, by virtue of which, if a ſingle brother have both claims, as related by the whole blood and as reunited, he bars all the reſt. The ſhare of one reunited brother, who deceaſes, another reunited one ſhall receive, and ſo forth, but a whole brother, not one by the ſame father only, ſhall alone receive the ſhare of a reunited brother by the ſame mother. A ſimilar opinion is delivered in the *Dipacalica*.

* This verſion of the text is tranſcribed from a manuſcript of SIR WILLIAM JONES. It is variouſly explained in the ſubſequent commentary. T

CCCCXXVII.

CA'TYA'YANA:—ON failure of nearer claimants, reunited brothers muſt be conſidered as heirs of thoſe, who are reunited, and diſunited brothers of thoſe, who are diſunited; *for* they reciprocally ſhare *the eſtates* if they have no progeny.

BROTHERS, who are not reunited, take not the ſhares of thoſe, who die after reunion; but diſunited brothers muſt be conſidered as heirs of thoſe, who die diſunited: "on failure of nearer claimants," that is, in default of a wife and the reſt. The laſt terms of the text are joined in the appoſition called *duandwa*. So CHANDE'SWARA. Theſe terms are added to ſhow the reaſon *of the precept*; the meaning therefore is, 'becauſe they are 'competent to take each other's ſhares, when they have no iſſue:' this alſo ſome lawyers affirm. By expreſſing in general terms, that reunited brothers are heirs of their coparceners, it is intimated, that a reunited brother of the whole blood ſucceeds to the excluſion of one, who remains ſeparate. VA'CHESPATI MISRA alſo obſerves, that uterine brothers, who are not reunited, do not take the heritage. Conſequently, if there be whole brothers, one of whom is, and the other is not, a coparcener, the reunited brother by the ſame mother has the ſole right of ſucceſſion by conſent of many authors.

BUT if two reunited brothers, one by the ſame, the other by a different mother, claim the ſucceſſion, what is the rule in that caſe? To this CHANDE'SWARA replies, the meaning of the text (CCCCXXVI) is this: on the competition of brothers of the whole and half blood, the whole brother ſhall alone take the eſtate. Accordingly,

CCCCXXVIII.

Vr̆hat MENU:—IF a brother by the ſame mother be living, one by a different mother ſhall not take the eſtate; the law is the ſame even though it be immoveable property; but, on failure of the whole brother, one of the half blood may indeed poſſeſs the eſtate.

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THIS is reaſonable; for it is ſaid by JI'MU'TAVA'HANA, if one have two claims, as brother by the ſame mother and as reunited, he bars all other claimants; therefore the reunited brother of the whole blood is ſole heir to the eſtate of the deceaſed; but, on failure of him, the diſunited brother by the ſame, and reunited one by a different, mother, have equal claims; becauſe one is brother of the whole blood, though diſunited; the other reunited, though brother of the half blood: and CHANDE'SWARA remarks, 'thus it is ſhown, that relation by the whole blood is a ground, on which even a diſunited brother may take the inheritance;' ſince there are arguments, on which both may claim the ſucceſſion, it is therefore declared, that both ſhall inherit: and MISRA obſerves, 'a brother by a different mother, having reunited himſelf to the family, ſhall take the eſtate of his half brother; but not unleſs he reunite himſelf:' an uterine one, however, may take the inheritance, even though he do not reunite himſelf to the family (interpreting the text by connecting remote terms). The following precept is explicit.

CCCCXXIX.

YA'JNYAWALCYA:—A BROTHER by a different mother, if he return after partition to the family, not any other half brother, ſhall inherit the eſtate; but a whole brother, even without returning, ſhall ſucceed *to it*, not a *diſunited* half brother by the ſame father only, *except on failure of the reſt*.

had not returned to the family. Since an order of ſucceſſion is not mentioned, theſe two ſhall ſucceed together; and a partition ſhall therefore take place between them. On failure of uterine brothers, the legiſlator adds, "not a half brother by the ſame father only;" that is, one, who is not reunited, ſhall not take the eſtate. Hence, if there be half brothers, one of whom is, and the other is not, reunited, the diſunited half brother is not heir. The equal claim of a reunited half brother with a reunited whole brother had been already denied, the equal claim of a diſunited half brother with a reunited half brother is now denied; there is conſequently no vain repetition. Such is the interpretation approved by CHANDE'SWARA. MISRA ſays, the laſt terms of the text are a mere repetition.

ON the reading of the ſecond meaſure *nânyóderyó d'hanam harét*, the conſtruction is, 'a half brother, who is not reunited, ſhall not inherit the eſtate.' JI'MU'TAVA'HANA thus expounds the text; a half brother, being reunited, ſhall take the eſtate, not a diſunited one; whole brother is repeated from the preceding text (CCCCXXVI); 'but a whole brother, even though not reunited, ſhall ſucceed, not ſolely the reunited half brother.'

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BUT others thus comment on both texts of YA'JNYAWALCYA (CCCCXXVI and CCCCXXIX); if there be whole brothers, ſome of whom are, and others are not, reunited, the legiſlator ſays, "a reunited brother ſhall take the heritage of a reunited one:" if the whole brothers remain ſeparate, he ſays, "an uterine brother ſhall take the heritage of an uterine one." In that caſe, if there be a reunited half brother what ſhall be the conſequence? The legiſlator replies, "a brother by a different mother, if he return after partition to the family, ſhall take the eſtate." Since both have claims to the ſucceſſion, they ſhall inherit equally: but a half brother, who had not reunited himſelf, ſhall not ſucceed; this the lawgiver declares, "not any other half brother." If a uterine and a half brother have returned to the family, what ſhall be done in that caſe? To remove the doubt whether both ſhall inherit under the vague expreſſion of the text "a reunited brother ſhall inherit the eſtate of a reunited one" (CCCCXXVI), the legiſlator ſays, "the reunited half brother by the ſame father only ſhall not take the inheritance" (CCCCXXIX).

SOME

Some lawyers affirm, that reunion of parceners is not a ground of ſucceſſion; *for, were it ſo, it might be ſuppoſed, that a ſon, who is owner of ſeparate wealth,* and a brother's ſon, would not *jointly inherit the property* poſſeſſed by a paternal uncle reunited with his nephew. On the *contrary*, inheritance poſitively reſts on other claims. Thus, ſucceſſion in right of fraternity being eſtabliſhed, *the* reunion *of one* bars any other brother. In like manner, if there be a whole brother not reunited, ſince he alone has a claim in right of affinity by the whole blood, he alone ſhall inherit; not a half brother, even though reunited. Thus the text above cited (CCCCXXVI) relates to uterine brothers only; and the legiſlator denies the claim of a half brother in the ſubſequent text (CCCCXXIX); "a brother by a different mother, whether reunited or not, ſhall not inherit the eſtate of his half brother" (*reading the text* nányóderyadhanam harét): but on failure of uterine brothers, the legiſlator adds, "a reunited *half* brother, not *any other* half brother by the ſame father only, ſhall inherit the eſtate."

THAT is wrong; ſince it contradicts all *reſpected* authors, and is inconſiſtent with the reaſon of the law; for why ſhould not reunion be a cauſe of a brother's ſucceſſion, as well as relation by the whole blood? If it be ſaid, ſince a ſon, a wife, and the reſt confer benefits on the proprietor in another world, there is no parity between that claim and one founded on reunion; but a uterine brother confers benefits by offering the double ſet of oblations for the mother; *the anſwer is*, a reunited brother alſo defrays religious ceremonies by means of *his* property *thrown* into parcenary. On failure either of a diſunited whole brother, or of a reunited half brother, the other is heir; in the one caſe, if there be half brothers, one of whom is, and the other is not, reunited, the reunited brother has the ſole right *to the inheritance*, not the diſunited one; for the text of YA'JNYAWALCYA expreſſes, "a reunited brother ſhall receive the eſtate of a reunited one" (CCCCXXVI). On failure of both theſe *prior claimants*, a diſunited brother by a different mother ſhall inherit, becauſe he alſo is brother by the ſame father. Since a mother alſo claims the funeral cake and other oblations, which are given by an uterine brother in the *śrádd'a* performed with a double ſet of oblations (CCCCXCVI), the whole brother is ſuperiour to one by a different mother, becauſe he offers the double ſet of oblations for the mother of the

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late proprietor since two brothers living in the same house, afford reciprocal support, preserve each other's property, confer mutual benefits by the acquisition of wealth, and respectively earn religious merit at the expense of wealth acquired by each other, they are nearer the one to the other, than a disunited brother

WHO is called a reunited parcener? He is thus defined by VRĬHASPATI,

CCCCXXX

VRĬHASPATI.—HE is said to be "reunited," who, having made a partition, lives again, through affection, with joint property, in the same house with his father, his brother, or his paternal uncle.

AFTER brothers have made a partition by mutual consent, when any one of them lives *again* with a certain other brother, these two are *said to be* reunited. Their dwelling together is not simply a residence in the same house or abode (for that may happen even without affection, when the habitations are not equally numerous with the brothers), but it consists in forming one household and their intentions are thus declared, "what is thy property is mine," their effects are thus intermixt "the duties of us both shall be the same," an agreement for community of duties is thus made in like manner *one is made for* common fare and this is deduced from the insertion of the terms "through affection," else this word would be superfluous, since they could not dwell one moment together without affection but now such particular regard is suggested by that term

"IN the same house,' in the same household Consequently two brothers, again living together, through mutual affection, as joint housekeepers, after having made a partition, are called reunited parceners Such is the meaning, and the text is so interpreted by RAGHUNANDANA, JIMUTAVAHANA, VACHESPATI MISRA, and the rest

WHEN the owners of several property live together as joint housekeepers, making a common stock of their fortunes, they are said to be reunited, for

this

this is *an* eaſy *interpretat on* not making a common ſtock of their fortunes after partition, for this would be *a* burdenſome *condition* Some become owners of ſeveral property by partition, others are naturally ſo Thus union founded on affection may take place between two perſons ſprung from different families natives even of different countries This ſome lawyers affirm It is wrong, for ſuch united perſons are no where ſeen, and the terms of the text, " having made a partition' would be unmeaning, and it is improper to conſider any *term as nearly ſuperfluous, which may become* pertinent accordingly a burdenſome condition cannot be imputed as a fault Reunion conſiſts in dwelling together as joint houſekeepers, after making a joint ſtock ſubſequent to partition It ſhould not be argued, that partners in trade, living together after a diſtribution of wealth gained by commerce, would be called reunited Partition ſignifies diſtribution of heritage Such being the *caſe, may not the ſons of two ſiſters be reunited, for they may* happen to live together in the ſame houſehold, after a partition of the property left by the maternal grandfather and the reſt? Her tage here ſignifies wealth inherited in the direct male line ſuch is the meaning, as appears from the terms of the text, " with his father, his brother or his paternal uncle " Th y alone are determinately meant, *who were not ſeparate by* their birth Of theſe, the father is firſt mentioned as the diſtributer of the eſtate when it is divided in his lifetime, the term, taken comprehenſively, includes alſo the paternal grandfather and great grandfather the brother is next mentioned as the diſtributer of ſhares among brothers and laſtly the paternal uncle is named, as the perſon, who diſtributes an eſtate ſhared with a ſon's ſon, whoſe own father is dead, the term, taken compr henſively, includes the ſon and grandſon of a paternal uncle, and the great uncle and others the wife of a brother and the reſt are not meant, b-cauſe th-y are ſubject to the control of their huſbands and ſo forth Among thoſe only do-s reunion take place, not among others but the practice of returning to coparcenary, after partition, with the ſon of a paternal uncle does exiſt as remarked by CHANDESWARA It ſhould be here noticed, that, if two brothers die after dividing the eſtate, the reunion of their ſons or grandſons is not conſiſtent with the obvious ſenſe *of th law*, becauſe he, who made a partition, does not *in this caſe* return to a common dwelling Such is the opinion of MISRA and CHANDESWARA

JI'MU'TAVA'HANA likewiſe holds, that they only, who may be coparceners by birth (in reſpect of property acquired by a father, brother, paternal uncle and the reſt), having made a partition, are reunited by dwelling together in the ſame houſe as joint houſekeepers, after annulling the former partition, through mutual affection, by a declaration in this form, "thy wealth is mine; and that, which is mine, is thine." There is no reunion of any other perſons, ſuch as partners in trade, by the ſimple junction of property.

HERE the ſon or other *male* deſcendants of a paternal uncle are comprehended in the term "and the reſt," as appears to have been underſtood by SRI' CRISHNA TERCA'LANCA'RA; for he has remarked on the words "by birth," that the mother is thereby excluded, becauſe her claim to property ariſes from marriage. Elſe the commentator would have ſaid, 'the mother is excluded, becauſe ſhe is not *found* among the perſons enumerated, namely the father, brother and uncle.'

BUT RAGHUNANDANA affirms, that reunion only takes place between father and ſon, between brothers, or between paternal uncle and nephew. In effect he conſiders the term "and the reſt," in the remark of JI'MU'TAVA'HANA, as comprehending only the ſon and nephew. JI'MU'TAVA'HANA again obſerves, when treating of the ſhares of reunited parceners, "reunion ſhould not be admitted among others beſides thoſe who are expreſsly mentioned, elſe the enumeration would be unmeaning." The author of the *Pracáśa*, after citing the text, adds, this is a poſitive precept. *However*, the opinion of CHANDE'SWARA and the reſt is conſiſtent with the reaſon of the law; for there is no difference whatſoever, whether the paternal uncle or his ſon be the diſtributer. But the opinion of RAGHUNANDANA and of the author of the *Pracáśa* follows the letter of the text. This ſhould be examined, and one opinion only ſhould be eſtabliſhed.

AMONG four brothers, if two be ſeparated, and two remain undivided, but the effects be diſtributed by arithmetical computation or the like; for example, ten *ſuvernas* out of twenty have been allotted to two brothers, and five a-piece to the other two; or if land or the like have been ſimilarly diſtributed; in that caſe,

caſe, ſhould one of the two undivided brothers die, leaving no ſon or other near heir, by whom ſhall the effects, aſſignable for his ſhare, be taken? Not by the uterine brother in ſo much reunited, *for he is not ſo in the ſtrict ſenſe of the term,* ſince reunion conſiſts in living together after partition with an agreement in this form, "what is thy property, is mine; and what is my property, is thine," but in this caſe partition had not taken place between thoſe two coheirs. Nor ſhall all the ſurviving brothers by the ſame mother take *the lapſed ſhare;* for that would contradict common ſenſe it is difficult to find a reaſon, why a reunited parcener ſhall alone inherit when brothers live together after partition, and all the brothers ſucceed when ſome of them live together without ever making a partition: in adminiſtrative juſtice the letter of the law muſt not be ſolely followed. If it be ſaid, partition by common conſent of all the brothers is authorized by *expreſs* ordinances, but the law has not indicated partition among ſome of the coheirs, and coparcenary of others, and no ſpecial rule of decision has been delivered on this point, no ſuch *partition ought* therefore to be made: *the arſter is,* if certain *Súdras* or the like, not having ſeen the codes of laws, make ſuch a partition, a rule of deciſion becomes neceſſary. Nor is that diſtribution void, for it has been made by the free conſent *of all the coheirs, and no ſpecial law forbids it.*

To this, lawyers reply, the expreſſion, "having made partition," does not intend a diviſion reciprocally granted, but any diſtribution, whether accepted, or made, by both the parceners, between whom reunion takes place. Conſequently two brothers have in this caſe a ſingle allotment, the others have *ſeparate* ſhares partition therefore takes effect even in regard to thoſe two, and they afterwards live together as joint houſekeepers. *It* ſhould not be objected, that the word "again" becomes irrelevant, becauſe they do not twice live together. Since the literal ſenſe of that term is burdenſome, and there is no occaſion to diſtinguiſh the ſhares, when reunion takes place, the word muſt be taken in a ſecondary ſenſe. *But other lawyers affirm,* that an undivided heir, as well as a reunited one, excludes a divided heir in the ſilence of the law this muſt be eſtabliſhed by reaſoning

In fact a diſtribution is in ſuch a caſe made among all the coheirs, by an act of the mind; accordingly, the portion of an eldeſt ſon, the beſt houſe

and

and the like are allotted In its conſequences there is no difference This brief expoſition may ſuffice.

UNDER the text above cited (CCCCXXVI), ſhall not one reunited brother take the veſted ſhare of another, even though he leave a ſon, a wife, or other near heir? No; for VRIHASPATI denies it (CCCCVII) "Or ſeclude himſelf from the world" (CCCCVII 2), the particle has a connective ſenſe alluding to degradation and the like "It devolves on his uterine brother," conſequently, if brothers by the ſame and by different mothers had reunited themſelves with the deceaſed, the uterine brother has the ſole right of ſucceſſion, but a reunited one by a different mother, and an uterine brother *not reunited*, have an equal claim both theſe inferences are here juſtified "To her, who is his ſiſter, a ſhare muſt be given" (CCCCVII 3) to defray her nuptials as already explained "Such is the law concerning him, who leaves no iſſue" (CCCCVII 3), neither a ſon, a ſon's ſon, nor the ſon of ſuch a grandſon, nor a daughter, nor the ſon of a daughter 'nor leaves a wife, nor father nor mother;" that is, no wife endowed with good qualities as above mentioned, the word mother is underſtood, having been regularly dropped by the rules of etymology. It follows, that a difference ariſes from the reunion of parceners in collateral ſucceſſion only, but the claim of reunited brothers is not ſtronger than that of a wife and the reſt

THE texts of MENU (CCCCVI), bearing the ſame import with thoſe of VRIHASPATI above cited, muſt relate to a reunited brother, who leaves no ſon, nor wife, nor other near heir CULLUCABHATTA concurs in this opinion "His uterine brothers" (CCCCVI 3); by repeating *the word* reunited, this relates to the uterine brothers who have returned to coparcenary and the term is alſo taken in a general ſenſe conſequently, if brothers by the ſame and by different mothers, had reunited themſelves with the deceaſed, the uterine brother is ſole heir, but, if he have not returned to coparcenary, he has an equal title with the reunited brother by a different mother This ſenſe is deduced *from the text*

"Such brothers as were reunited;" that is, half brothers, for uterine

kindred had been already mentioned: by the word "reunited," ſuch brothers, not having returned to the family, are excluded. "And ſiſters;" this relates to the allotment of a ſufficient ſum to defray their nuptials. As for the remark of CULLU'CABHATTA, that uterine brothers and ſiſters ſhall aſſemble and divide equally the veſted ſhare of their uterine brother, it muſt be affirmed that his meaning is the ſame: he cannot intend, that their rights ſhall be equal; for it is no where ſeen, that ſiſters inherit the property of their brothers; and the text is well explained as relating to the allotment of a ſufficient ſum to defray their nuptials. As for another obſervation of CULLU'CABHATTA, that, among brothers by the ſame and by different mothers, they alone, who uſe the ſame furniture and utenſils, having made a common ſtock of their ſeveral effects, ſhall divide his ſhare, not all the brothers by the ſame or by different mothers: here alſo his meaning muſt be underſtood to be the ſame. Reunited brothers by a different mother inherit only on failure of a reunited one by the ſame mother.

"UTERINE ſiſters" not given in marriage; *they afterwards belong to the family of their huſbands. So the Pracáſa cited in the Retnácara.*

CCCCXXXI.

YA'MA:—IMMOVEABLE undivided property ſhall be the heritage of all the brothers, *be their mothers the ſame or different;* but immoveable property, when divided, ſhall on no account be inherited by the ſons of the *ſame father* only.

THE meaning therefore is, 'all brothers, whether ſons of the ſame father and mother, or of the ſame father only.'

JI'MU'TAVA'HANA.

IF any immoveable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in coparcenary, the half brothers ſhall have equal ſhares with the reſt; but the uterine brother has the ſole right to divided property moveable or immoveable. The text of *Vrihat* MENU likewiſe intimates the ſame, by alluding to a diſtinction

in

in reſpect of immoveable property, when the ſubject propoſed was already aſcertained by the former part of the text (CCCCXXVIII). This maxim, ſay lawyers, ſhould be likewiſe adduced in the caſe where no reunion has taken place.

EVEN a ſon given, provided he be virtuous, is *conſidered as* allied by the whole blood, if he were accepted by the mother of the ſon born in lawful wedlock; but, if not adopted by her, he is *conſidered as* a half brother; for in the caſe of a ſon given and the reſt, adoption is acknowledged to be equivalent to procreation.

ON the death of one, who has received the inheritance of his brother, his own ſon or other heir claims the ſucceſſion, not the ſon of any other brother; for he has no lien on the property of his uncle, the eſtate having already devolved on a collateral relation. Such is the ſucceſſion of brothers.

VI. ON failure of them, the ſon of a brother is heir, by the texts of YA'JNYAWALCYA and VISHNU (CCCXCVIII, CCCCXVII); and becauſe he offers two funeral cakes to anceſtors of the late proprietor, one to his father, the other to his paternal grandfather. A brother's ſon has not an equal claim with a brother; for VISHNU ſays, "if he be dead, it goes to the brother's ſon;" and "he" muſt relate to the neareſt term "brother:" and YA'JNYAWALCYA intimates, that, in default of brothers, their ſons inherit, by ſaying, "on failure of the firſt of theſe, the next in order ſhares the eſtate:" and a brother, who is the giver of ſix funeral cakes, or of three *(if he be ſon of the ſame father only)*, which it was incumbent on the late proprietor to offer, is ſuperiour to the brother's ſon, who is giver of two funeral cakes which the late proprietor was bound to preſent to his father and paternal grandfather. JI'MU'TAVA'HANA concurs herein. As for the aſſertion, that the ſon of a living brother does not inherit, merely becauſe he confers no benefits, ſince he does not offer the funeral cakes, that is futile; for it might be thus ſuppoſed, that the ſon of another deceaſed brother would inherit *in preference to his uncle*; and you muſt admit, that, on failure of other brothers, the ſon of a living but degraded brother does inherit: aſſuming the natural claim of a nephew, whoſe father is alive, like that of a daughter's ſon, whoſe

parent

parent is living, he might have a right of ſucceſſion. Neither can it be affirmed, that the paternal uncle ought to have an equal claim with the brother's ſon, becauſe he offers funeral cakes to the paternal grandfather and great grandfather of the late proprietor. The brother's ſon has a ſuperiour claim, becauſe he preſents an oblation to the *late proprietor's father*, who is the perſon chiefly conſidered. Thus JI'MU'TAVA'HANA. The father is indeed preeminent; becauſe a man has no right to perform a *ſráddha* for his paternal grandfather or other anceſtor, unleſs he have a right to perform one for his ſire; and the father is neareſt of kin *to the late proprietor*.

HERE again a diſtinction muſt be admitted; the ſon of an uterine brother has the firſt claim, becauſe he confers benefits on the mother of the late proprietor; for it appears from a text cited by JI'MU'TAVA'HANA, RAGHUNANDANA and the reſt (CCCCXXXII), that the father's natural mother alſo ſhares with her huſband the funeral cake offered by a ſon's ſon; but thoſe benefits cannot be conferred by the ſons of half brothers: *however*, on failure of other nephews, the ſon of a half brother may inherit.

CCCCXXXII.

THE mother ſhares with her huſband obſequies ſolemnly performed *by his ſon*; the paternal grandmother, with her huſband; and the mother of the paternal grandfather, with her's.

IF any one nephew be reunited, ſhall he alone take the whole, or ſhall he ſhare it with all the ſons of brothers? It ſhould not be argued, that a brother's ſon, being reunited, has the ſole right of ſucceſſion, by the general maxim above cited (CCCCXXVI). That text being propounded in the courſe of treating upon the ſucceſſion of brothers, muſt be taken ſpecially, as relating ſolely, to that ſubject. Such being the caſe, it was vain to mention the reunion of a nephew with his paternal uncle: this ſhould not be affirmed. They are all mentioned to authorize that reunion, becauſe they thereby become ſimilar to undivided coheirs by having common duties and common income and expenſe. MENU and VRIHASPATI have only ordained the *preferable* claim of a reunited brother; and no legiſlator has expreſſly

preſsly declared the title of a reunited uncle or nephew. As for the text of NAREDA (CCCCXXXIII), that alſo, from its coincidence with the precept of VRIHASPATI, muſt be conſidered as relating to the ſame ſubject

CCCCXXXIII.

NAREDA.—THE *veſted* ſhare of reunited brothers is declared to belong excluſively to them, in any other caſe than this, they ſhall not *excluſively* ſhare the inheritance of the deceaſed, it ſhall go to other brothers, when no iſſue is left.

THAT, which is the veſted ſhare of reunited brothers, belongs excluſively to them, in any other caſe, that is, if the deceaſed were not reunited, they, who were, ſhall not ſhare the inheritance, that is, they ſhall not take the entire allotment of the deceaſed Then who ſhall receive that ſhare? The legiſlator replies, "it ſhall go to others" that is, to other brothers Or the ſenſe may be, 'in any other caſe, that is, on failure of reunited brothers, it ſhall go to others not *naturally* entitled to partake of the ſhare,' that is, to other brothers ſhare here ſignifies the property or inheritance, the natural partakers of it are obviouſly the ſons, it goes to others, that is, to brothers Or the ſenſe may be, 'when half brothers are reunited, ſuch reunited brothers by different mothers may inherit from each other, in any other caſe, that is, if they be not reunited, half brothers do not ſhare the inheritance, but it ſhall go to others, namely to the full brothers CHANDESWARA ſays, the meaning is this, in any other caſe, that is, on failure of reunited brothers, it ſhall go to others not *firſt* entitled to ſhare the inheritance, or who do not claim the ſucceſſion in right of reunion But the author of the *Pracasa* thus expounds the text, "than this" alludes to ſomething underſtood, namely to the caſe of one who leaves no male iſſue, in any other inſtance, that is, if he do leave male iſſue, the reunited brothers ſhall not ſhare the inheritance but, when they die childleſs it ſhall go to others, namely to brothers and the reſt The mention of reunion is ſolely intended for the ſucceſſion of brothers, hence it is not ſpecially conſidered in the caſe of a brother's ſon if this be affirmed, it may be anſwered, the author of the *Dipacalica* does not concur in that opinion, for, in expounding the text of YAJNYAWALCYA (CCCCXXVI) he-

ſubjoin.

ſubjoins the term "or other parcener" after the word "brother," and delivers this gloſs; the ſhare of a brother or other parcener dying after reunion, another reunited brother or coheir ſhall take. Conſequently the maxim muſt be eſtabliſhed on the ſenſe conveyed by the phraſe, "a reunited parcener ſhall receive the veſted ſhare of a reunited one" (CCCCXXVI): and that ſenſe may be thus expreſſed; the reunited coheir alone ſhall take the eſtate, if there be others related in the ſame degree but not reunited: it exhibits an exception to the general rule of inheritance deduced from another text. Thus, if a father, having made a partition among his ſons in his lifetime, and becoming reunited with any one of them, die after the lapſe of a few days; in that caſe, the reunited ſon, and no other, ſhall inherit his property. Accordingly MISRA affirms, that, in the caſe of reunion between parent and child, the reunited ſon alone, not the diſunited one, obtains the ſhare of his father, although another ſeparated ſon be living; for it is declared without reſervation, that a reunited parcener receives the inheritance from a reunited one; and the reunion of father and ſon has been alſo propounded by a text above cited (CCCXXX). What is thus affirmed by him, is alone juſt; for the claim of other ſons on the property of their father was annulled by partition, and the right of the reunited ſon was revived by reunion.

IT muſt be here inquired, how the remark, that their property is annulled by partition, can be appoſite; for, while the father lived, the ſon had no right to his wealth before the diſtribution of it; and the text of YA'JNYAWALCYA (XCII) merely implies, that partition of an eſtate inherited from the paternal grandfather may be made at the will of the ſon: even admitting the literal ſenſe of that text, ſons could never have a claim on the wealth acquired by the father himſelf.

IN ſaying 'the right of ſons was annulled by partition,' the meaning is this; the ſon naturally had a claim on the property of his father by birth alone, under the rule of GO'TAMA (Chap. I, Sec. I, Art. I); but not being then independent, while the father was living, ſince the text of CA'TYA'YANA expreſſes, "a ſon becomes independent after the death of both his parents" (Book II, Chap. IV, v. XV 5), he had no title to *claim* partition

or

or the like; but after the death of his father, he has ſuch a right; this is declared by DE'VALA in theſe terms, " they have not ownerſhip while a faultleſs father lives" (V); that is, they have not independent dominion, although they have a proprietary right; it is not ſaid in the law, YA'JNYADATTA has not ownerſhip of the property of DE'VADATTA: nor is a ſon deſtitute of right to the paternal eſtate, while his mother ſurvives: conſequently ſuch a title only is annulled by partition: if it be ſaid, this is the meaning intimated by VA'CHESPATI MISRA, the anſwer is, that opinion is not confirmed by JI'MU'TAVA'HANA and the reſt: were it even admitted by them, it would not be here affirmed; for, if a father, having made a partition with his ſons, die after reuniting himſelf with any other parcener whomſoever, *it would follow, that* his property could not be inherited by the divided ſons; but no other perſons ought to take the ſucceſſion while ſons live, ſince none can, like them, have a preſent right to his property.

THE commentator obſerves, 'it ſhould not be affirmed, that it is not ſo, becauſe the text contains an exception, " this law concerns him, who leaves no iſſue" (CCCCVII); for that relates to a ſon born after partition.' To this again it may be objected, that the word " this," occurring in the text of the legiſlator, muſt, if poſſible, be referred to the law propounded by him, *that is*, to the claim of a reunited brother by the ſame mother on the property of a reunited one, and to the ſucceſſion of a diſunited brother by the ſame mother, on failure of ſuch reunited brothers, propounded in the text immediately preceding it; not to a diſtinction founded on reunion, for VRĬHASPATI has not, like YA'JNYAWALCYA (CCCCXXVI), noticed *ſuch a diſtinction*. It is improper to reject, without ſufficient cauſe, the law promulged by the legiſlator himſelf, and aſſume one propounded by another author as intended by the word " this:" and there is no proof that the expreſſion, " his ſhare ſhall devolve on his uterine brother," ſhould be explained as ſignifying generally the right of any one reunited parcener to inherit the property of another. In like manner, there is no argument to prove, that the terms, " who leaves no male iſſue," relate to a ſon born after partition. Hence this text (CCCCXXVI) is intended to propound a diſtinction founded on reunion, when there is a competition of heirs related in the ſame degree; the reunited parcener alone ſhall therefore take the heritage, if there be whole brothers, or half brothers, or

paternal

paternal uncles, or others as near of kin to the deceaſed: for no diſtinction is found in that phraſe; and the preceding text related to all *reunited parceners*; and a queſtion may ariſe on *the claims of* all. Hence it ſhould not be admitted, that this text relates to brothers only. So JI'MU'TAVA'HANA and RAGHUNANDANA. The words "and the reſt" being inſerted in the expreſſion, "paternal uncles and the reſt," many lawyers thus ſtate the opinion of JI'MU'TAVA'HANA; a ſon might be here comprehended under the terms "and the reſt," but that is not elegant; for, ſince he has precedence above all other heirs, he ought to be firſt mentioned: or the ſon of a paternal uncle and the reſt might be comprehended, but that is not the opinion of RAGHUNANDANA. Yet in fact both ought to be included conformably with *the ſentiments of* MISRA and CHANDE'SWARA. On the death of him, who, having made a partition, reunited himſelf with his paternal uncle, in preference to his own brother, would not the brother and paternal uncle have equal claims? If it be ſaid, they are not related in the ſame degree; *the anſwer is*, the ſame might be ſuppoſed of brothers by one or more mothers. To the queſtion propoſed, the anſwer is, they have not equal claims; *for* the title of brothers in right of fraternity is alone propounded by the text (CCCCXXVIII).

WE reſume the ſubject. The right of a nephew or other parcener who has returned to the family being thus proved, the reunited ſon of an uterine brother has the firſt claim: on failure of him, ſuch a ſon of a half brother and the diſunited ſon of a whole brother have equal claims; on failure of either of them, the other is heir: if there be neither one nor the other of theſe claimants, the diſunited ſon of a half brother is heir. In reſpect of immoveable undivided property, no author has ſaid, that nephews of the whole and half blood have equal claims by parity of reaſoning, as in the caſe of brothers; and the text of the legiſlator is not explicit on this point.

HAS the ſon of a reunited brother a ſpecial title or not? There is no law on this ſubject; nor is the ſon of a reunited parcener acknowledged to be ſo himſelf, for there is no proof of it. If he be not conſidered as a reunited coheir, the right of deduction in favour of the eldeſt might be ſuppoſed when he makes a partition with his paternal uncle; for the text (CCCCVII) only denies the right of the firſt born, when partition is made among reunited

parceners.

parceners. Nor ſhould this be deemed admiſſible; for it is inconſiſtent with the reaſon of the law. Admitting that he is not a reunited coheir, ſtill he is an undivided one; and as ſuch, he ought therefore, by parity of reaſoning, to take the heritage, like a reunited parcener, although ſeparated coheirs be living. When this is demonſtrated, then the ſon of a reunited parcener, ſo long as partition be not made, ſhall take the heritage, although ſeparated coheirs be living, who are equally near of kin to the deceaſed. Accordingly, if two of four brothers have not made a partition, the property of one undivided brother ſhall devolve on the other: in like manner, if a man have made a partition with his children, and a ſon, born afterwards, die leaving male iſſue, ſuch a grandſon alone ſhall inherit the property of his paternal grandfather; not the ſon with whom partition had been already made, nor his male deſcendant. Some authors thus expound the law.

BUT in fact, ſince it is only declared, that a reunited parcener ſhall alone take the inheritance, the undivided coheir ſhall not ſucceed *in preference to others:* in the caſe of four brothers above ſtated, it is admitted that two *remaining in coparcenary* ſhall be conſidered as reunited after partition; for ſhares muſt be allotted to all, that the portions may be made equal as required by the law before cited (XXXIX 1). The ſon born after partition is ſole heir of the whole property left by the father, under a text above quoted (C); but no law is found, by which his ſon ſhall become ſole heir. What ſhare ſhall he receive? If he may take the allotment, which was due to his father, under a text formerly cited (LXXIX), the remainder of the paternal eſtate was the due allotment of his father; and he ſhall therefore obtain it. *To the queſtion thus propoſed the anſwer is,* he ſhall take ſo much as would have been the ſhare of his father, *ſuppoſing him* not *to have been* tranſcendently virtuous. It ſhould not be objected, that the ſons of thoſe, with whom partition was formerly made, would not only take the ſhares formerly allotted, but alſo receive part of the wealth reſerved by the paternal grandfather, whilſt the ſon of a ſon born after partition would only receive a ſhare of the wealth ſo reſerved by his grandſire; which would be an unjuſt diſparity. It muſt unavoidably be admitted: without expreſs authority of law, no inference can be eſtabliſhed from *apparent* diſparity. Other authors contend, that

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the law ſhould be ſo expounded * Such is the ſucceſſion of a brother's ſon.

VII On failure of him, the ſon of a nephew, ſhall inherit, by the text of YA'JNYAWALCYA (CCCXCVIII), for kinſmen related by the funeral cake are determinately intended by the terms kindred ſprung from the ſame original ſtock, and the ſucceſſion of the neareſt *ſapinda* is ordained by the text of MENU.

CCCCXXXIV.

MENU:—To the neareſt *ſapinda, male or female,* after him in the third degree, the inheritance next belongs, then, on failure of *ſapindas* and of their iſſue, the *ſamanódaca,* or diſtant kinſman†, ſhall be the heir; or the ſpiritual preceptor, or the pupil, *or the fellow ſtudent, of the deceaſed.*

WHETHER proximity by birth or by the relation of the funeral cake be *preferred,* the paternal uncle is in both views nearer *of kin* than the grandſon of a brother; for he is ſon of the father of the *late* proprietor's father, and offers two funeral cakes which he was bound to preſent, and ſurely the paternal grandfather is nearer of kin, for he is father of the late proprietor's father, *would have* ſhared the funeral cake offered by him, and gives an oblation, which he was bound to preſent to the paternal great grandfather On this point JIMUTAVA'HANA remarks, the grandſon of a brother bars the paternal uncle, becauſe he offers a funeral cake to the deceaſed proprietor's father, who is chiefly conſidered; but the great grandſon of a brother, though a deſcendant of the proprietor's father, is barred by the paternal uncle, becauſe he is fifth in deſcent, and is *therefore* excluded from the oblation of a funeral cake

WOULD not the brother of the paternal grandfather be in like manner heir, although a great grandſon of the ſame anceſtor be living; and would he not have an equal claim with the grandſon of the paternal grandfather? To this we reply, "neareſt" here ſignifies proximate both by birth

* The [illegible] the [illegible] † *Saculya*

and

and by the funeral cake; conſequently he, who is neareſt of kin to the late proprietor by birth and by the funeral cake, and who is moſt immediately connected both by deſcent and by oblations, ſhall take the property. It ſhould not be objected, whence is this deduced; and why is not proximity to the deceaſed proprietor ſolely propounded? Nearneſs of kin is not the ſole cauſe of ſucceſſion, but connexion by the funeral cake does alſo cooperate; and hence it appears that the benefits conferred are the grounds of the claim: now the benefits conferred by the neareſt of kin, are more important, than thoſe afforded by one who is more diſtantly related; remote kindred ought therefore to inherit only on failure of nearer kinſmen. Thus, ſince the ſon of a daughter confers benefits by the oblation of a funeral cake, and ſince it is recorded in the *Mahábhárata*, that even his birth alone is beneficial to his maternal grandfather (CV), therefore the ſon of a daughter, conferring benefits on her father, is mentioned by JI'MU'TAVA'HANA, as heir, on failure of the great grandſon in the male line. The order of *ſucceſſion by* nearneſs of kin is proximate to the proprietor himſelf. Hence a perſon, who confers benefits on the laſt poſſeſſor himſelf, is firſt heir; after him, the father of the late proprietor, being moſt near; if he be dead, the perſons who confer benefits on the father, in the order of proximity to him; on failure of theſe, the paternal grandfather and the reſt comparatively near; on failure of the anceſtor, he, who confers benefits on him. Accordingly the brother is ſole heir, although a nephew, capable of performing obſequies, be living; for the brother is neareſt to the father. It ſhould not be objected, that the ſon, as well as the father, is moſt near to the late proprietor; and the great grandſon of that ſon, conferring benefits on him, might therefore claim the inheritance. He does not afford thoſe benefits, which the late proprietor was bound to confer on his anceſtors.

Such being the caſe, is not the ſeparate ſpecification of the brother's ſon ſuperfluous, ſince he is alſo ſuggeſted by the mention of kinſmen ſprung from the ſame original ſtock? Nor ſhould it be anſwered, that he is ſeparately mentioned for the ſake of exhibiting a diſtinction, becauſe there are various ſorts of brothers and nephews. Were it ſo, the paternal uncle ought likewiſe to be ſeparately mentioned, becauſe that is equally true of him. To the queſtion thus propoſed, the anſwer is, no; for the brother is heir on failure of the

the father, and the nephew, in default of brothers; thus ſucceſſion follows the order of proximity, that is, the courſe of benefits conferred on the neareſt of *kin*: it does not follow ſuch an order of proximity by which the paternal grandfather would be *firſt* heir on failure of the father; nor has the paternal uncle an equal claim with a brother's ſon: he is therefore ſeparately mentioned for the ſake of ſhowing the order of ſucceſſion in right of proximity by birth and the like, and for the purpoſe of denying a concurrent title of three deſcendants of the father, like that of three deſcendants of the proprietor himſelf, namely his ſon, and his grandſon and great grandſon *whoſe father and paternal grandfather are deceaſed*. Conſequently, on failure of nearer claimants including the daughter's ſon, the father is heir; in default of him, the mother; after her, the brothers; if they be dead, a brother's ſon; next a brother's grandſon in the male line; and after him, the ſon of the father's daughter: ſuch is the path indicated by JI'MU'TAVA'HANA. But SRI' CRI'SHNA TERCA'LANCA'RA, author of a commentary on his treatiſe, contends on the reaſon of the law, that the ſon of a ſon's daughter and the ſon of a grandſon's daughter alſo claim the inheritance becauſe they confer benefits on their maternal great grandfather and on the father of a maternal great grandmother. How can a daughter's ſon and the reſt be conſidered as kinſmen ſprung from the ſame original ſtock? Becauſe the term is uſed in the ſenſe of race or lineage *any how deſcending* therefrom; and the ſon of a daughter mediately ſprings from that ſtock. It ſhould not be objected, that, were it ſo, a ſiſter and the reſt might claim the inheritance, becauſe they confer benefits by means of their ſon or other deſcendant. Their claim is obviated by a text above cited (CCCCXIII) and by BAUDHA'YANA declaring women to be in general incapable of inheritance: this does not contradict the right of wives and the reſt, which is propounded by ſpecial texts. So JI'MU'TAVA'HANA.

IN the ſucceſſion of brother's ſons, a diſtinction between the whole and half blood muſt be underſtood; not in the caſe of daughter's ſons. *But* ſome lawyers conſider it as the opinion of JI'MU'TAVA'HANA, that, in the ſucceſſion of the ſons of the father's daughters and ſo forth, a diſtinction is taken between uterine and half ſiſters. Herein SRI' CRI'SHNA TERCA'LANCA'RA does not acquieſce; becauſe no law is found *expreſsly* declaring the participation of a maternal grandmother in the funeral cake offered to

the

the maternal grandfather. Thus, on failure of the father's iſſue including daughters, the paternal grandfather is heir to the property becauſe he is neareſt to the deceaſed; on failure of him, the paternal grandmother, ſuch being the order of ſucceſſion deduced from the text of MENU (CCCCXXIV) and from her participation in the funeral cake offered by her ſon's ſon (CCCCXXXII); and the reaſoning holds good, that, as a mother ſucceeds on failure of the father, ſo ſhall the paternal grandmother ſucceed in default of the paternal grandfather. On failure of them, their iſſue including the ſon of a daughter ſhall inherit; and in the ſucceſſion of the paternal grandfather's ſon, grandſon, and great grandſon, the ſame diſtinction muſt be admitted, as before, in reſpect of their relation to the *late proprietor's* father by the whole or half blood, becauſe the paternal grandmother ſhares the funeral cakes offered by her deſcendants, and the wife of a paternal grandfather does not ſhare the oblations preſented by the deſcendants of another wife of her huſband: but no diſtinction is taken in the caſe of daughter's ſons, becauſe the maternal grandmother does not ſhare the funeral cake offered by her daughter's ſon.

NEXT, on failure of iſſue of the paternal grandfather, including his daughter's ſon, the paternal great grandfather is heir; in default of him, the paternal great grandmother, becauſe ſhe ſhares the funeral cake offered by her great grandſon. This obſervation of JI'MU'TAVA'HANA and RAGHUNANDANA ſhould be reſpected. It muſt not be argued, that, in the want of an expreſs law, her ſucceſſion is forbidden by the general maxim above cited (CCCCXIII). A man ſhould not affirm of his own authority, that no ſuch ſpecial ordinance exiſts; for the ocean of the law has not been traverſed. On failure of her, the deſcendants of the paternal great grandfather, including his daughter's ſon as before, ſucceſſively claim the inheritance. Here again a diſtinction muſt be admitted in the ſucceſſion of the paternal great grandfather's ſon, ſon's ſon, and grandſon's ſon, according to their relation to the paternal grandfather by the whole or half blood; but not in the inſtance of his daughter's ſon. Such is the ſucceſſion of kinſmen ſprung from the ſame original ſtock.

VIII. ON failure of them, a more diſtant kinſman is heir, by the text of YA'JNYAWALCYA (CCCXCVIII). In default of iſſue of the paternal

great grandfather, including his daughter's ſon, the maternal grandfather and the reſt, who would have ſhared the funeral cakes which the deceaſed would have been bound to offer, and they, who preſent funeral cakes to ſuch anceſtors, inherit in the order of proximity; namely the maternal grandfather, the maternal uncle, his ſon, and ſon's ſon, the maternal great grandfather, his ſon, ſon's ſon, and grandſon's ſon, the father of the maternal great grandmother, his ſon, ſon's ſon, and grandſon's ſon on failure of the firſt reſpectively, the next in order is heir. Again, their daughter's ſons have a title as givers of funeral cakes to the maternal grandfather, to his father, and to the father of this maternalgreat grandfather conſequently, on failure of iſſue of the maternal grandfather including his daughter's ſon, the deſcendants of the maternal great grandfather, alſo including his daughter s ſon, ſucceſſively take the inheritance In this ſenſe does YA'JNYAWALCYA uſe the term kindred Such is the rule approved by SRI CRISHNA TERCA'LANCARA, who follows the opinion of JI'MU'TAVA'HANA.

ON failure of the giver of a funeral cake to be ſhared by the deceaſed, *and in default* of a ſon of the father's daughter, who gives three funeral cakes which the deceaſed was bound to offer to his own father and the reſt, and ſo forth, the maternal uncle and others, who preſent oblations, which the deceaſed was bound to offer to his maternal grandfather and the reſt, claim the inheritance in the order of proximity

JI'MU'TAVA'HANA

IT ſhould be here remarked, that the ſon of a ſon s and of a grandſon's daughter, and the ſon of a brother s and of a nephew's daughter, and ſo forth, claim ſucceſſion, in the order of proximity, before the maternal grandfather; for they alſo confer benefits by the oblation of funeral cakes It muſt not be objected, that, were it ſo, the ſon of a grandaughter would have a prior titl, even though the father be living, in as much as he gives a funeral cake to *the deceaſed* himſelf The oblations, preſented to the maternal grandfather and the reſt, are ſecondary, becauſe they muſt follow funeral cakes offered to paternal anceſtors, the ſon of a grandaughter can have no claim while the giver or ſharer of a principal oblation exiſts Nor ſhould it be objected as a conſequence, that the

ſon

ſon of the late proprietor's daughter or of his father's daughter, and ſo forth, could have no title, if any kinſman within the degree of a *ſapinda* were living. The *Maha'bhárata* ſhowing, that a daughter's ſon procures advantage even by his birth alone (CV), it appears that he does confer important benefits. SRI' CRISHNA TERCA'LANCA'RA concedes to this opinion. Such is the ſucceſſion of maternal kindred.

IX. ON failure of them, a diſtant kinſman allied by family *(ſaculya)* is heir by the text of MENU (CCCCXXXIV). " A kinſman of the ſame family" is the father of the paternal great grandfather, and his iſſue, and ſo forth, and is called *ſamánódaca:* ſuch kinſmen claim the inheritance in the order exhibited. So JI'MU'TAVA'HANA.

THEY, who are partakers of the rice and clarified butter wiped off the hand, with which the funeral cakes have been offered, are *ſaculyas:* ſuch is the meaning. JI'MU'TAVA'HANA expounds the text of BA'UDHAYANA (CCCXCVII), three perſons aſcending from the father of the paternal great grandfather, and three deſcending from the ſon of the great grandſon, do not participate in the ſame funeral cake, and are therefore pronounced kinſmen allied by family and ſharing divided oblations.

IT ſhould be noticed, that, among the *ſapindas* rendered impure by reaſon of a dead kinſman, three are alſo conſidered as ſuch in reſpect of inheritance, and three as *ſaculyas.*

CCCCXXXV.

THE fourth perſon and the reſt ſhare the remains of the oblation wiped off *with* cuśa *graſs;* the father and the reſt ſhare the funeral cakes; the ſeventh perſon is the giver of oblations: the relation of *ſapindas,* or men connected by the funeral cake, extends *therefore* to the ſeventh perſon, *or ſixth degree of aſcent or deſcent.*

IN the firſt place, the ſon of the great grandſon is heir, becauſe he offers the remains of the funeral cake to the proprietor, to his father, and

and to his grandfather; next the grandſon of the great grandſon, and after him, the great grandſon of the great grandſon in the male line; on failure of theſe, the paternal grandfather's paternal grandfather, becauſe he *would have* ſhared the remains of the funeral cake wiped off by the proprietor for the ſake of anceſtors; if he be dead, his ſon, and other deſcendant to the third degree, have ſucceſſive claims; on failure of theſe, the daughter's ſon of the paternal grandfather's paternal grandfather, and other givers of a funeral cake in the triple ſet of oblations, inherit in order; in default of them, the ſon, grandſon and great grandſon of the great grandſon of the grandfather's grandfather in the male line have ſucceſſive claims as givers of the remains of funeral cakes to the paternal grandfather's paternal grandfather; on failure of them, the paternal great grandfather's paternal grandfather *is heir; if he be dead, his ſon,* grandſon, or great grandſon in the male line, his daughter's ſon, the ſon of the great grandſon in the male line, and the ſon of that great grandſon's ſon, *and the ſon of this laſt mentioned deſcendant*, have ſucceſſive claims as before; on failure of them, the paternal great grandfather's paternal great grandfather, his ſon, grandſon, and great grandſon, his daughter's ſon, the ſon, grandſon, and great grandſon of his great grandſon, *ſimilarly inherit* in order; on failure of all theſe, the *ſamánódacas* or perſons connected by an equal oblation of water, have a right to the inheritance: now the relation of *ſamánódacas* extends to the fourteenth perſon, by the following text.

CCCCXXXVI.

But the relation of *ſamánódacas*, or thoſe connected by an equal oblation of water, ceaſes with the fourteenth perſon.

CCCCXXXVII.

Vrihaspati:—On failure of them, uterine brothers, or brother's ſons, paternal and maternal kinſmen, pupils, or learned prieſts, are entitled to the wealth of the deceaſed:

2. If a man die leaving no iſſue, nor wife, nor brother, nor father, nor mother, let all kinſmen, related by the funeral cake

cake *in equal degree*, divide his inheritance in due proportions.

3. But half the collected wealth ſhould be firſt ſet apart for the benefit of the deceaſed, and carefully appropriated to his monthly, ſix-monthly, or yearly obſequies.

4. Where many claim the inheritance of a childleſs man either paternal or maternal, or more diſtant kinſmen, he, who is the neareſt of them, ſhall take the eſtate.

Let half the eſtate be ſet apart to defray the obſequies of the deceaſed. Such is the ſenſe.

Among theſe, the eighth anceſtor, and his ſon, grandſon, great grandſon, daughter's ſon and the reſt, as far as the fourteenth in deſcent counted from the eighth anceſtor, ſucceſſively claim the inheritance: the ſame muſt be underſtood in reſpect of the ninth anceſtor and the reſt; for nearneſs of kin and ſuperiour benefits are entitled to reſpect in every caſe. Men connected by equal oblations of water are allied by family; and on failure of ſuch kinſmen *as partake of the remains of funeral cakes*, thoſe, who are connected by equal oblations of water, are heirs, as ſuggeſted by the term "kinſmen allied by family;" for it is ſo remarked by Ji'mu'tava'hana. Such is the ſucceſſion of kinſmen.

X. On failure of them, the ſpiritual preceptor is heir; if he be dead, the pupil; by the text of Menu (CCCCXXXIV).

Ji'mu'tava'hana.

In default of an order *of ſucceſſion* ſuggeſted by the ſenſe or terms *of the text*, the order ſuggeſted by the *literal* reading is reſpected: ſuch is his notion. The word kinſman or connexion, as employed by Ya'jnyawalcya (CCCXCVIII), muſt include the ſpiritual preceptor: there is conſequently no deficiency in the text of Ya'jnyawalcya. But others contend, ſince the ſpiritual preceptor ſtands in the place of a father, and the

pupil in that of a ſon, therefore the ſpiritual preceptor inherits only on failure of the pupil. That is futile; for a ſimilar reading occurs in the texts of BAUDHA'YANA and others, and YA'JNYAWALCYA declares, that a fellow ſtudent in theology takes the ſucceſſion on failure of the pupil (*CCCXCVIII*).

CCCCXXXVIII.

BAUDHA'YANA:—ON failure of kinſmen connected by the funeral cake, kinſmen allied by family ſhall inherit; in default of them, the ſpiritual preceptor, the pupil, or the prieſt hired to perform ſacrifices, ſhall take the inheritance; and laſtly, on failure of them, the king.

THE term ſpiritual preceptor *(áchárya)* ſignifies him who inveſts the pupil with the ſign of his claſs, as expreſſed in the text.

CCCCXXXIX.

HE, who girds the pupil with the ſacrificial cord, and inſtructs him in the *Véda*, is called an *áchárya*.

SRI' CRISHNA TERCA'LANCA'RA concurs in this expoſition. A fellow ſtudent in theology is he, who ſtudies the *Véda* under the ſame preceptor. In default of him, deſcendants from the ſame ancient ſage claim the ſucceſſion; on failure of them, men ſprung from the ſame branch of a venerable ſtock, by the text of GO'TAMA (CCCCXL). So JI'MU'TAVA'HANA.

CCCCXL.

GO'TAMA:—LET thoſe kinſmen take the inheritance, who give the funeral cake, *who offer the remnant, and water only*, who are deſcended from the ſame holy ſage, or *laſtly* who ſpring from the ſame company of *Riſhis*.

BUT ſome hold, that the ſpiritual teacher and the reſt could only inherit on failure of deſcendants from the ſame branch of a venerable ſtock or company

pany of *Rĭshis* in conformity with the order *of succeſſion* ſtated in the text of GO'TAMA, and there is no difficulty in comprehending kinſmen deſcended from the ſame holy ſage or from the ſame company of *Riſhis*, in the texts of YA'JNYAWALCYA, VRIHASPATI and BAUDHA'YANA, under the terms "diſtant kinſmen," and "allied by family" as the phraſe, "kinſman allied by family," which is uſed by MENU (CCCCXXXIV), is acknowledged by JIMUTAVAHANA to include the *ſamanódacas* or kinſmen connected by equal oblations of water, ſo may the term be ſimilarly extended in the preſent inſtance alſo, agreeably to the coincidence of the text of GO'TAMA That opinion is queſtionable

OTHERS contend, that the ſtipendiary prieſt is heir immediately after the pupil, in preference to ſuch diſtant kinſmen, by the text of BAUDHA'YANA CCCCXXXVIII), and he ought to have the firſt title, becauſe he was more immediately connected *with the deceaſed*, than the fellow ſtudent in theology.

BUT MISRA ſays, the ſucceſſion may be thus briefly ſtated, the ſon *is firſt heir*, on failure of him the ſon's ſon, in his default, the great grandſon by males, if no ſuch iſſue be left, the virtuous wife, on failure of her, the daughter, after her, the mother, if ſhe be dead, the father; for want of him, the brother, in default of him, his ſon, on failure of the nephew, the *ſapinda* neareſt of kin to the deceaſed, after him, the more diſtant *ſapindas* in order; if there be none ſuch, the neareſt *ſaculya*, or kinſman allied by family, next, the more diſtant *ſaculyas* in order, if there be none, the daughter's ſon, in default of him the mother's family and the reſt, on failure of all *other* heirs, the king, excepting the property of a *Brâhmana* but, in the caſe of wealth left by a prieſt, another honeſt *Brahmana* is alone entitled to take the inheritance

ON failure of perſons deſcended from the ſame primitive ſtock, a kinſman *in general* is heir, and by that term is meant a relation of the deceaſed himſelf, of his father, or of his mother

CCCCXLI.

THE ſons of his own father's ſiſter, and thoſe of his own maternal uncle, muſt be conſidered as his own kinſmen.

IN like manner there are kinſmen of the father and of the mother, ſuch as their father's ſiſter's ſons, mother's ſiſter's children, and maternal uncle's iſſue; theſe take the ſucceſſion in order, as MISRA alſo obſerves. Conſequently theſe are comprehended in his recapitulation, by the terms, "on failure of him, the mother's family and the reſt."

HERE authors deduce from the form of ſucceſſion delivered by JI'MU'TAVA'HANA, that, on failure of kinſmen allied by the funeral cake or by family *name*, the ſon of the father's maternal uncle, or of the *father's* ſiſter, or of the mother's maternal uncle, or of the mother's ſiſter, are likewiſe heirs. That is not accurate; for, ſince theſe are inferiour to the father's maternal grandfather, and mother's maternal grandfather and others, it is improper, without the authority of expreſs law, to affirm the title of the father's maternal uncle's ſon and the reſt; and the word *(bandhu)*, being taken in its accepted ſenſe, obviouſly ſignifies the kinſmen of the proprietor himſelf; and their title is in effect thereby eſtabliſhed: this we hold reaſonable.

ON failure of heirs including kinſmen ſprung from the ſame branch of a venerable ſtock; the ſucceſſion devolves on *Bráhmanas*, by the text of MENU.

CCCCXLII.

MENU:—ON failure of all thoſe, the legal heirs are ſuch *Bráhmanas*, as have read the three *Védas*, as are pure *in body and mind*, as have ſubdued their paſſions; *and they muſt conſequently offer the cake:* thus the rites of obſequies cannot fail.

"HAVE read the three *Védas*;" have ſtudied all the *Védas*.

"THUS the rites of obſequies cannot fail;" that is, rites, which would be loſt by *the eſtate* being enjoyed *without performing obſequies for the deceaſed*,

ceaſed, being completed in conſequence of the transfer of *that* duty to another by the deſcent of the property to a *Brahmana,* do not fail.

JI'MU'TAVA'HANA.

THUS the rites, namely the obſequies of the deceaſed proprietor, cannot fail. CULLU'CABHATTA.

OTHERS explain the text, on failure of heirs including kinſmen ſprung from the ſame branch of a venerable ſtock, ſince the wealth of the deceaſed goes to *Brâhmanas,* the king, purſuing proper conduct, does not violate juſtice.

SINCE it muſt *at all events* be ſaid "on failure of theſe," therefore *the word* all, *as here* uſed by MENU, muſt be intended to intimate the right of *all* heirs before mentioned, including men ſprung from the ſame branch of a venerable ſtock or company of *Rishis* and the reſt. Such is the opinion of CULLU'CABHATTA.

THE want of heirs deſcended from the ſame holy ſage, or from the ſame company of *Rishis,* and the failure of *Brahmanas,* muſt be underſtood *to be the nonexiſtence of any ſuch perſon* in the ſame town, elſe the eſcheat to the king could never take place

JI'MU'TAVAHANA.

THE falling *of eſtates* to the ſovereign is mentioned in a contiguous ſentence. MENU declares, that, on failure of virtuous *Brahmanas* reſiding in the ſame town, the inheritance of a *Cſhatriya* and the reſt ſhall eſcheat to the king

claſſes;" other than the ſacerdotal tribe; namely the military claſs and the reſt. But the wealth of a *Bráhmana* muſt never be taken by the king: conſequently, on failure of honeſt *Bráhmanas*, he muſt give the property of a prieſt to *Bráhmanas* in general. Such is the notion of CULLU'CABHATTA. The wealth of other claſſes, in default of heirs including kinſmen ſprung from the ſame branch of a venerable ſtock, the king ſhould give to honeſt *Bráhmanas;* on failure of them, he may take it himſelf as an eſcheat. Such is the opinion of JI'MU'TAVA'HANA.

BUT MISRA and the reſt hold, that the firſt text of MENU (CCCCXLII) relates to *the property of Bráhmanas*, but the wealth of *Cſhatriyas* and the reſt ſhall be taken by the king alone. Such being the rule of deciſion, why may he not likewiſe take the eſtate of a prieſt? To obviate this doubt, the legiſlator firſt ordains, that the property of a *Bráhmana* ſhall not be ſeized by the ſovereign. Accordingly BAUDHA'YANA declares the taking of holy property reprehenſible in a king.

CCCCXLIV.

BAUDHA'YANA:—HOLY property unduly appropriated, kills a ſon and a ſon's ſon; *for it deſtroys like the moſt exalted* poiſon: therefore the king ſhall on no account take the property of a *Bráhmana*.

"DESTROYS a ſon and a ſon's ſon;" kills them alſo. The property of a *Bráhmana* is indeed the moſt deadly poiſon *to the ſacrilegious ſpoiler.*

The *Retnácara.*

MUST it not be affirmed, that this text ſhows it highly reprehenſible to take wealth from a *Bráhmana* by force, fraud, or the like *but not ſo to take it without violence as an eſcheat?* No; for the text of DE'VALA is explicit.

CCCCXLV.

DE'VALA:—IN every caſe the king may take the wealth of a ſubject dying without an heir, except the eſtate of a prieſt; for the property of a *Bráhmana*, dying without an heir, muſt be given to learned prieſts.

"HEIR;"

"HEIR;" taker of inheritance: the term is regularly derived in a dative ſenſe.

CCCCXLVI.

VRIHASPATI:—THE king takes *as an eſcheat* the wealth of thoſe *Cſhatriyas, Vaiśyas* and *Súdras*, who leave no ſon, nor wife, nor brother; for he is lord of all.

IN this text, by declaring that he may take the wealth of *Cſhatriyas* and the reſt, it is intimated, that the property of a *Bráhmana* ſhall not be taken.

CCCCXLVII.

SANC'HA and LIC'HITA:—THE property of a learned prieſt deſcends to *Bráhmanas*, not to the king; wealth conſecrated to the gods, or allotted to prieſts, muſt not be ſeized by the ſovereign, nor a depoſit open or ſealed, nor wealth regularly inherited, nor the property of infants or women: thus the *Véda* expreſſes,

"THE inherited property of a woman muſt not be ſeized by the king, nor *acquired* effects of an infant, nor the wealth of a woman received in the ſix modes of acquiſition, nor the patrimony of infants."

THE term, which occurs in this text *(pariſhad)*, ſignifies a *Bráhmana*.

The *Vivádа Retnácara* and *Vivádа Chintámeni*

"DEPOSITS" and the reſt are terms employed indefinitely: hence the property conſecrated to the gods, or allotted to prieſts, muſt on no account be taken by the king, unleſs as a fine or the like. A ſealed depoſit is a diſtinct ſort of bailment, depoſited under ſeal. "Wealth regularly inherited" alludes to patrimony; it is property, which has deſcended *to the poſſeſſor* from another. So the *Madana Páryáta* and *Retnácara*.

THE ſeizure of a *Bráhmana's* property being forbidden in theſe texts,

on

on whom ſhall the eſtate of a *Bráhmana* devolve? This queſtion ariſing, and the words of DE'VALA (CCCCXLV) bearing the ſame import, the text of MENU (CCCCXLII) muſt relate to the ſacerdotal claſs only. Conſequently, on failure of heirs including kinſmen ſprung from the ſame branch of a venerable ſtock or company of *Riſhis*, the eſtate of a *Bráhmana* deſcends to learned prieſts, and the property of any other perſon eſcheats to the king; the wealth of the military and other claſſes does not go to learned prieſts. Such is the reſult. Accordingly the text of NA'REDA alſo exhibits the right of the king to the eſcheat, on failure of daughters and the reſt, not in default of heirs including prieſts.

CCCCXLVIII.

NA'REDA:—ON failure of daughters *the heirs* are, kinſmen allied by family, more diſtant kindred, and men who claim the ſame origin *with the deceaſed;* on failure of all *theſe*, the property eſcheats to the king,

2. Excepting the wealth of a *Bráhmana;* but a king, attentive to his duty, ſhall allot a maintenance to the wives of the deceaſed: this is declared to be the rule of inheritance.

KINSMEN allied by family are ſons of paternal uncles and the reſt. Men, who claim the ſame origin, are perſons belonging to the ſame tribe. But all this ſuppoſes the widow to be deficient in good qualities.

The *Retnácara.*

BY "perſons belonging to the ſame tribe," it is not meant, that any *Cſatriya* is heir of a *Cſhatriya*, and any *Vaiſya* of a *Vaiſya;* for that would be an unprecedented conſtruction: but it muſt be underſtood, from the coincidence of the text of GO'TAMA (CCCCXL), that 'ſimilar origin' intends ſimilarity of deſcent from a holy ſage or from a company of *Riſhis*. MISRA and the reſt thus expound the law.

"THIS ſuppoſes the widow to be deficient in good qualities;" that is, the

the wife left by a *Cſhatriya* or other man of inferiour claſs; but in the caſe of a *Bráhmana's* widow deficient in good qualities, the meaning is, let the king, levying it on the heirs, give her a maintenance. VISHNU alſo propounds the right of the king to the eſcheat, on failure of deſcendants from the ſame company of *Riſhis* with the deceaſed; for his expreſſion "on failure of a fellow ſtudent" (CCCCXVII) muſt be taken in a comprehenſive ſenſe, from the coincidence of other texts.

IT ſhould not be argued, becauſe the ordinances of MENU prevail over all other codes, therefore muſt the texts of other ſages be reconciled with that, which is propounded in his inſtitutes: *and*, for the ſake of coincidence with his precept (CCCCXLII), the right of the king, mentioned in other texts, takes effect only on failure of honeſt *Bráhmanas*. There is no difficulty in explaining the text of MENU (CCCCXLII) in this ſenſe. VRIHASPATI pronounces that to be of no authority, which contradicts the ſenſe of his ordinances; and it is conſiſtent with juſt reaſoning to infer, that, as that expoſition of a law, which is moſt conformable with reaſon, prevails, when two interpretations of it are *found* in competition, ſo the expoſition of a law of MENU, which coincides with the text of another ancient ſage, ſhall prevail, when two interpretations of it are propoſed. Conſequently the term "all" in the ſecond text of MENU (CCCCXLIII), and the word "heir" employed by CULLU'CABHATTA in expounding that term, 'on failure of the heirs abovementioned,' ſignify all heirs including perſons ſprung from the ſame company of *Riſhis*, but not including *Bráhmanas unallied to* the deceaſed. Authors thus expound the law. Of theſe two opinions one only ſhould be followed.

IF other *Bráhmanas* refuſe to take the inheritance, or if there be no *Bráhmanas*, it muſt in this caſe be thrown into the water, in like manner as has been ordained by NA'REDA (Book I, v. CCXXXI).

THE effects of an infant, and thoſe belonging to a woman, muſt not be retained by the king, even though they have fallen into his poſſeſſion (CCCCXLVII): SANC'HA and LIC'HITA themſelves cite the authority of a precept; "thus it is expreſſed," that is, the *Véda* declares: this muſt be ſup-

plied. "The property of a woman;" effects belonging to her; the inheritance of her husband, *which has devolved on her*, and so forth. "The effects of an infant," property any how acquired by a minor, having been given to him by any person whomsoever. Some lawyers say, the last part of the text explains the property of a woman and effects of an infant; and this relates to the king's own wife, sister and the rest; but of other women, even the inheritance or the like must not be taken by him: this will subsequently become manifest. "The six modes of acquisition;" received before the nuptial fire and so forth.

CCCCXLIX.

MENU:—The king should guard the property, which descends to an infant by inheritance, until he return from the house of his preceptor, or until he have past his minority.

WEALTH, which descends to an infant by inheritance, and becomes the property of the minor, let the king guard; that is, let him protect it from the *other* heirs.

The *Retnácara.*

CONSEQUENTLY the meaning is, let him act in such a manner, that other heirs may not take the whole, defrauding the infant who is incapable from nonage of conducting his own affairs; or the sense may be, let him commit the share of the minor in trust to any one coheir or other guardian. "Until "he return from the house of his preceptor;" this alludes to the three *first* classes, for persons of those tribes are not qualified to conduct their own affairs before they return home. "Or until he have past his *minority*;" this alludes to the servile class: a young man has past minority, when his age is not less than sixteen years *(that is, when he has completed his fifteenth year)*.

CCCCL.

VISHNU:—THE king should guard the property of an infant, and the effects of the husband and wife *in the absence of the husband.*

CCCCLI.

CCCCLI.

SANC'HA and LIC'HITA:—LET the king protect the effects of infants who are incapable from nonage of conducting their own affairs, and the goods belonging to widows of learned priests and of valiant soldiers; but effects, of which there are no owners, escheat to the king.

THE king must guard the property which devolves on the wives of learned priests and of valiant soldiers, by the absence or departure of the priest and the soldier. Such is the exposition delivered by CHANDE'SWARA.

CCCCLII.

BAUDHA'YANA, treating of the succession of sons:—THEIR shares, if they be incapable from nonage of conducting their own affairs, let the king keep carefully guarded, together with the accumulation on those shares, until the minors arrive at *years of* discretion.

"WITH the accumulation;" with the increase. "Carefully guarded;" well protected. "Until;" in the sense of restriction: before they attain their seventeenth year.

The *Retnácara*.

CONSEQUENTLY, if the proprietor be dead, and his sons choose to make a partition of his estate, the king, being informed by the minor, or by another kinsman, or by his own officer, must himself, or through some person appointed by him, keep the share of the minor until he attain the age of sixteen years: in some instances it should be laid out for increase. In like manner, the expenses and other matters should be superintended by the king himself, or by a person appointed by him. These and other points may be argued from the reason of the law. Again; if the minor have no brother, the whole estate should be nevertheless guarded in a similar manner; for the reason of the law is the same. Thus the property of a woman, and the goods of a minor, falling into the king's power, should not be taken by him as owner: this has been already noticed. But it should be here remarked, that the property of a minor

minor ſhould be intruſted to heirs and the reſt *appointed* with his concurrence; or, if the infant be abſolutely incapable of diſcretion, with the conſent of a near and unimpeachable friend, ſuch as his mother and the reſt. CA'TYA'YANA declares, that kinſmen muſt guard the property of an infant.

CCCCLIII.

CA'TYA'YANA:—LET all the coheirs guard the ſhare, which belongs to an abſent parcener;

2. But, if a man die leaving an infant ſon, his wealth muſt be preſerved entire by his kinſmen; and they may divide it in due proportions, after the minor has paſt adoleſcence.

IF one, who has an infant ſon, die, his property muſt be preſerved by the *kinſmen or brethren of the minor; it muſt not be immediately* diſtributed: but they may divide the eſtate after he has paſt adoleſcence. Such is the meaning of the phraſe. Conſequently the ſhare of a minor muſt be preſerved, dur*ing his adoleſcence, by kinſmen, like the allotment for an abſent parcener; for* the reaſon of the law is the ſame: but before his adoleſcence partition is not proper. *In like manner, the king, or the kinſmen appointed by him, ſhould* guard the minor's property received from his brothers as his ſhare of the inheritance. Here kinſmen ſignify relations in the male line, or, on failure of them, a ſiſter's or daughter's ſon or other near kinſman *of the father.* In practice a mother is guardian of a minor, and of his property; and that is proper, if ſhe be capable *of protecting the ward:* but being a woman, ſhe is under the control of her huſband's mother and the reſt; ſtill the effects of the widow and of the grandſon muſt be guarded; and ſince the mother in law is a woman, ſhe requires the aid of another kinſman: and he ſhould be ſelected with the concurrence of the paternal grandmother, and be approved by the king; for the paternal grandmother beſt knows who, among the kinſmen, is ſkilled in the conduct of affairs, and the king is an univerſal ſuperintendent: and if the widow be old and capable of governing her own conduct, there is no harm in permitting the eſtate to be guarded by a kinſman ſelected by her; for it is only directed, that a widow and the reſt ſhall guard the property by any *poſſible* means. A conteſt ariſing between the *mother in*

law

law and the widow, if the king, reſiding at a great diſtance, cannot accurately diſtinguiſh their good and bad characters, then indeed any perſon may be appointed by the king's own ſelection. This method, eſtabliſhed by lawyers on their own judgment, is conſiſtent with the reaſon of the law.

CCCCLIV.

VRĬHASPATI:—A BROTHER, a brother's ſon, a *ſapinda*, or a pupil, performing rites with a funeral cake *for the deceaſed*, ſhall thence obtain increaſe *of proſperity*.

CONSEQUENTLY he, who takes the eſtate of the deceaſed, ſhall perform his obſequies; but, if one be heir to the eſtate, and another be qualified to perform the obſequies, he muſt give a ſufficient ſum and cauſe the rites to be celebrated by him, who is qualified to perform them.

CCCCLV.

SMRITI:—HE, who takes the eſtate, ſhall perform the obſequies.

THE word *ſrádd'ha*, here ſignifies the obſequies performed excluſively for a perſon recently deceaſed. The *Pracáſa* and *Retnácara*.

BUT others contend, on the text of VRĬHASPATI above cited (CCCCXXXVII 3), that he, who takes the eſtate of the deceaſed, muſt alſo perform the annual *ſrádd'ha*: and ſuch is the practice with ſome perſons. That is wrong; for there is no difficulty in conſidering the word "annual' as relating to the firſt anniverſary obſequies. Another text does relate to that ſubject; "He, who takes the eſtate, and fails in performing the *loſt* duties for the deceaſed, *is criminal* &c."

How can the ſpiritual preceptor, who takes the eſtate of a *Cſatrĭya*, perform his funeral rites; ſince that is forbidden?

CCCCLVI.

THE prieſt, who performs funeral rites for perſons of an inferiour

riour tribe, is degraded to that claſs in the preſent world and in the next.

No, for this text relates to brothers unequal in claſs; and the difficulty is obviated by ſaying, the ſpiritual preceptor may accompliſh the funeral rites by the intervention of a qualified perſon equal in claſs with the deceaſed.

CCCCLVII.

VISHNU:—HE, who is heir to the eſtate, is the giver of funeral cakes.

SECTION II.

ON THE INHERITANCE OF ANCHORITES AND DEVOTEES.

THE ſubject of ſucceſſion to the property of a houſeholder being concluded, YA'JNYAWALCYA propounds ſucceſſion to property, which belonged to a man who had entered into an order of devotion

CCCCLVIII

YA'JNYAWALCYA:—THE heirs of a hermit, of an anchorite,* and of a ſtudent in theology, are, in *inverſe* order, the ſpiritual teacher, the virtuous pupil, and the brother by religious duties being pupil of the ſame preceptor.

"BEING pupil of the ſame preceptor," having the ſame ſpiritual teacher He is brother by religious duties and pupil of the ſame ſpiritual father the appoſition is in the form called *carmadhâraya*. "In order," that is, in the inverſe order hence the ſpiritual preceptor ſhall take the property of the perpetual ſtudent in theology, the virtuous pupil, verſed in the ſtudy of revelation concerning the ſupreme ſoul, and in preſerving that ſacred ſcience, *ſhall take* the eſtate of an anchorite; and the brother by religious duties, being pupil of the ſame ſpiritual father, takes the wealth of a hermit. "The brother by religious duties" is one familiarly known as brother of the deceaſed, the ſubſequent term *(ècatirt'hi)* may ſignify belonging to the ſame order of devotion.

IF it be alleged, that this contradicts the text of VASISHT'HA (CCCXXXVIII), it may be nevertheleſs reconciled by ſuppoſing effects any how poſſeſſed. CHANDE'SWARA.

* I follow Sir William Jones in applying the name of hermit to the *Vanaprast ha*, and anchorite to the *Yati* or *Sannyási* See tranſlation of MENU, Chap 6 T.

VACHESPATI

VACHESPATI MISRA concurs in the ſame expoſition. Another author has ſtated much, which was obvious, concerning the ſuppoſition of effects any how poſſeſſed; for example, the hoard of a hermit for the performance of annual rites, and the truſs of an anchorite or the like.

BUT JI'MU'TAVA'HANA conſiders the laſt term of the text *(écaàrt'hi)* as diſtinct from the reſt. Conſequently, the ſpiritual brother ſhall take the property of a hermit; the virtuous pupil, the effects of an anchorite; and the ſpiritual préceptor, the wealth of a ſtudent in theology: on failure of them, one, who belongs to the ſame order, is heir. The perpetual ſtudent in theology is he, who, having abandoned his father and the reſt, reſides for life in the family of his preceptor, remaining ſtrictly obedient to him. But the property of a temporary ſtudent in theology ſhall be taken by his own father and the reſt. Such a ſtudent in theology, according to the learned, is he, who remains near his father and the reſt *of his kindred.*

CCCCLIX.

VISHNU:—THE ſpiritual preceptor ſhall take the property of a deceaſed hermit.

IT ſhould not be argued from the coincidence of this rule of VISHNU, that the direct order is meant in the preceding text; and that the inverſe order need not be ſuppoſed. Were it ſo, the conſequence would be incongruous, ſince the ſpiritual brother would be heir of perpetual ſtudents in theology, although their ſpiritual father were living. Nor ſhould it be argued, that here, as in the caſe of ſucceſſion to the eſtate of him who leaves no ſon, the order may be ſuch, that the perſon laſt mentioned is heir on failure of the preceding. The anchorite can have no ſpiritual father. *It muſt* be therefore underſtood, that the ſpiritual father is firſt heir to the wealth of a hermit; on failure of him, the ſpiritual brother; as in the ſucceſſion to the eſtate of a *worldly* man, who leaves *no male* iſſue. According to JI'MU'TAVA'HANA, the inſertion of both terms, ſpiritual brother, and pupil of the ſame tutor, or devotee of the ſame claſs, is uſeleſs; for both ſenſes are conveyed by the ſingle term ſpiritual brother.

AGAIN;

AGAIN; terms are correlative in order then only, when they correſpond in number, as in the example, "The charms of the lyre, of the wreath of jaſmine, of the blue lily, are ſurpaſſed by her delightful voice, her ſmiles, and her enchanting glance:" but here the number is unequal. This objection is anſwered *by ſaying*, that, although correlative order be only acknowledged in the inſtance of terms equal in number, the ſenſe ſhows, that the laſt, not a preceding term, muſt be rejected as not included in the correlative order. The ſenſe, exhibited by conſtruction, is ſubordinate to the implied purport: as in the example, "CHAITRA is armed with a ſword and wears earrings, and MAITRA does ſo likewiſe;" the wearing of earrings is alone ſuggeſted by the term "ſo," becauſe the implied purport points thereto: and thus in other inſtances.

As for the remark, that, as the word pupil, in the inſtance of the anchorite, ſignifies him, who duly learnt the forms enjoined to that order, ſo the term ſpiritual preceptor may ſignify him, who taught thoſe forms; and the ſpiritual father is therefore firſt heir of hermits and the reſt; after him, the pupil; after him again, the ſpiritual brother; and laſtly, one belonging to the ſame order: and ſuch may be the ſucceſſive right of inheritance. That argument is erroneous; for it is inconſiſtent with approved uſage.

SECTION III.

ON A SECOND PARTITION AFTER REUNION OF PARCENERS.

IN treating of ſucceſſion to the property of him who has no ſon, it has been ſaid, "a reunited parcener is heir of a reunited one," now, if two coheirs who have renewed coparcenary, make a ſecond partition, how is it regulated? On this point MENU and VISHNU propound a text above cited; "if "brethren, once divided and living again together as parceners, make a "ſecond partition, the ſhares muſt in that caſe be equal, and the firſt born "ſhall have no right of deduction" (CCCCVI 1).

HERE "equal ſhares" ſuppoſe the reunion of brothers belonging to the ſame tribe but, if a *Brahmana* and a *Cſhatriya* become reunited, their allotments muſt be underſtood to follow the proportions before mentioned, for this text is merely intended to deny the right of deduction which had been ordained in favour of the firſt born

JI'MU'TAVA'HANA.

FROM the concurrent import of the text of VRI'HASPATI (CCCCVII 1), does it not appear, that a ſecond deduction in right of ſeniority is denied when a ſecond partition is made,* not the original right to a larger portion, which had already gained validity? No, for, whether they be father and ſon, brothers, uncle and nephew, or the like, they poſſibly may be undivided in reſpect of wealth acquired by the father, paternal grandfather, or the like accordingly, the firſt born cannot have ſeparate property in the *identical* portion formerly received on account of ſeniority, becauſe a common right to all effects is veſted in both reunited parceners by the avoidance of the ſeveral rights proclaimed by a former diſtribution, ſince JI'MU'TAVA'HANA expreſſes, 'parceners, having made a partition, and afterwards living toge-'ther in the ſame houſe as joint houſekeepers, after thus annulling parti-

* See the various reading of this text in a ſubſequent page. T.

'tion,

' tion, " what is thy property is mine, what is my property is thine," are said to be reunited ' It should not be argued, that the term " annulling partition" only signifies obviating the mediate consequence of the characteristicks of partition, not cancelling any several vested rights Were it so, since it is not a maxim, that lots will fall on the same chattels *as before*, and since the lots cast may ascertain a right to other goods, while the original right to the former effects is retained, both reunited parceners might have property in almost every chattel after the second partition

NOR should it be objected, were it so, how could the shares, formerly ordained for a *Bráhmana* and a *Cshatriya*, remain *in a second distribution?* Since the text concerning partition among brothers of various classes may be applicable to the second, as well as to the first distribution, and since it is not contradicted by any other text, it should be so established Thus the meaning of the phrase, " their allotments follow the proportions before ordained," is, that the division shall be made in that proportion, and mode, which were observed in the first instance, for this is no less a partition *than the former distribution was.*

BUT MISRA thus explains the terms of the text (CCCCVII 1), although seniority exist, entitling the first born to a greater portion, still that greater allotment shall not be given the same legislator propounds an exception in respect of wealth acquired by learning The commentator's meaning is this, a larger portion, again received in right of seniority by birth or the like, under the text of VRĬHASPATI (XLV), because this is also a partition of property, is forbidden in this second distribution. since the claim of the first born to the larger portion, formerly received by him, had been already obviated,* the result is the same, the only difference consists in the *commentator's* display of learning As for the remark, that the same legislator propounds an exception in respect of wealth acquired by learning, that is not restricted to science, for the exception, which shall *now* be mentioned in respect of a double share, must be considered as rela-

* Great obscurity pervades the whole argument The eldest has no right to a second deduction nor does he retain, during renewed coparcenary, his separate property in the identical effects which composed his former allotment in right of seniority but he receives on a second partition the equivalent of his original due T.

ting

ting to acquiſition in general The legiſlator declares that the acquirer ſhall have a double ſhare in the preſent inſtance, as in the original partition

CCCCLX

VRIHASPATI —BUT, if one of the reunited brethren acquire wealth by learning or valour, or the like, two ſhares of it muſt be given to him *on a ſecond partition*, and the reſt ſhall have each one ſhare.

BY learning, or valour, or any other means of acquiring ſeveral property The *Retnácara*

CONSEQUENTLY the law, promulged by VYA'SA for the firſt partition (CX), is extended to the ſecond the acquirer therefore has a double ſhare, according to the *Retnacara* and the reſt, if the wealth were acquired by the ſimple exertion of learning or the like with ſupplies from the common eſtate and ſo forth, but, if it be the acquiſition of ſcience technically ſo denominated by CA TYA'YANA, the common eſtate not being uſed and ſo forth, the wealth thus acquired is the ſeveral property of the acquirer, and if ſupplies were received from the common eſtate and ſo forth, he, who is equal or ſuperiour in learning, has one ſhare, and he, who is inferiour in knowledge, is excluded from participation if the wealth be acquired by agriculture or the like, without ſupplies *from the common eſtate*, it becomes the ſeveral property of the acquirer, with ſupplies, it is ſhared by all the parceners this, which has been already explained, muſt be alſo underſtood in the preſent caſe.

BUT, according to JIMUTAVA'HANA and others the acquirer ſhall have a double allotment, and the reſt ſhall have each one ſhare of wealth any how gained with ſupplies from the joint ſtock and ſo forth, if the learning were acquired after a maintenance provided out of the common ſtock, all the parceners ſhall have the ſhares ordained for them, although the joint property were not employed during the acquiſition of the wealth but, even though the common funds of ſupport be not uſed during the acquiſition of ſcience, nor during that of wealth, they, who are equal or ſup

our in learning, participate: if the money be earned without uſe of joint property, through agriculture or the like, by *the labour of* a body nouriſhed on the joint funds of ſupport, it *nevertheleſs* becomes the ſeveral property of the acquirer, as before explained.

According to all opinions, the diſtribution is regulated by the uſe made of joint property. What is received from a friend, or on account of marriage, or the like, is held as ſeveral property: the implied ſenſe of the text of Vrĭhaspati muſt be conſidered as extending thus far, according to the circumſtances of each caſe.

When partition is again made after the period of reunion, what ſhare belongs to him, who, being ſkilled in the means of acquiſition, had gained much wealth previouſly to the former diſtribution, and who was therefore entitled to two ſhares at the time of dividing it; and what proportion belongs to him, who gained much wealth after the original partition? If it be ſaid, an equal ſhare with the reſt; that is inconſiſtent with common ſenſe: equality of allotment, conſiſting *only* in the prohibition of a greater portion for the firſt born, muſt be therefore eſtabliſhed in the text above cited (CCCCVI 1). In like manner an unequal diſtribution, after the reunion of brothers of various claſſes, is legal. A ſecond allotment of a greater ſhare to the firſt born is forbidden by the text above cited (CCCCVII 1); the former right to a greater portion is not thereby denied, ſince it had already gained validity. Even on the reading approved by Chandéswara *(punar vibhága caraṅé téſhám jyaiſht'hyan na vidyaté*, if brothers again make a diviſion of their joint-property, the firſt born has no right to a larger portion; inſtead of *téſhám vibhága caraṅé punar jyaiſht'hyan na vidyaté*, if they, *who, after ſeparation, have become reunited through mutual affection*, make a partition, ſeniority does not again prevail;) the right of the firſt born to a larger portion is only denied when a ſecond partition is made.

It ſhould not be argued, that the term "ſeniority" may here bear a general ſenſe, becauſe there is no authority for reſtricting its meaning in the preſent inſtance; and that the term "again" muſt ſignify "but alſo." The larger portion, already received in right of ſeniority, cannot now be

forbidden;

forbidden; and it is inconſiſtent with common ſenſe, that he, who contributed a greater ſum *to the joint ſtock*, when he became reunited, ſhould receive back a leſs ſum, when a diviſion is made; and further, the caſe is ſimilar to that of the acquirer of wealth as abovementioned. Nor ſhould it be argued, that a common right to the whole property being veſted in both reunited parceners, there is no authority for any ſubſequent unequal diſtribution. As wealth, gained by partners in trade and adventure trafficking with unequal ſtock, is diſtributed in proportion to their reſpective capitals, even though all are equally owners of the wealth thus acquired; ſo, in this caſe likewiſe, nothing prevents a ſimilar induction. Accordingly MISRA denies the right of the firſt born to a larger portion on a ſecond partition of joint property, by remarking 'although ſeniority exiſt entitling the firſt born to a greater portion, ſtill that greater allotment 'ſhall not be given.

OTHERS ſay, the larger portion already obtained in right of ſeniority is not retracted; for the text is intended merely to prohibit the deduction before ordained for the firſt born; and the remark of JI'MU'TAVA'HANA is intended merely to forbid that allotment in right of ſeniority, which had been before ordained, that is, enjoined or declared by legiſlators for the original partition.

VRIHASPATI defines a reunited parcener (CCCCXXX). According to JI'MU'TAVA'HANA and the reſt, reunion can legally take place among them only, who are mentioned in the text, namely father and ſon and the reſt. According to CHANDE'SWARA and others, reunion may legally take place among all thoſe, including the great grandſon, among whom partition can be made. Some hold, that diſunited ſons and the reſt have no claim of ſucceſſion, if there be reunited ſons or the like. In no caſe is the reunion of female heirs admitted.

IF a man, having made a partition with his ſons, and again reſiding with any one of them as a reunited parcener, die after begetting another ſon, this laſt born child ſhall be ſole heir of his eſtate, by the text of MENU (CI). "He ſhall make a partition with the brethren who are reunited;" that is, the

the reunited brethren ſhall receive their reſpective ſhares, and the ſon, born after partition, ſhall take his father's allotment.* It ſhould not be argued, as the meaning of the term "ſhare," that the ſon born after partition ſhall divide *his father's allotment* with his reunited brothers. That would contradict the precept, "A ſon, born after a diviſion, ſhall alone inherit the patrimony". Nor ſhould it be objected, that this contradicts the precept "a reunited parcener is heir of a reunited one." That relates to the competition of equal claimants. Nor ſhould it be objected, that partition is proper, becauſe the claim of a reunited parcener in right of renewed coparcenary, and that of a ſon born after partition in right of poſterior birth, are both diſtinct claims. It is ſhown by a text formerly cited (C), that ſons, born before the diſtribution have no claim on the wealth retained by the father after partition, if a ſon born after it exiſt, and it is improper to reſtrict that text, unleſs common ſenſe or expreſs law oppoſe *its comprehenſive import*, for reunited parceners have been enriched by their own ſhares, but the ſon born after partition has no means of ſubſiſtence beſides his father's ſhare.

If he, who is reunited with another brother, poſſeſs any undivided property, on whom does the right thereto ſubſequently devolve? It goes to the reunited parceners only, for a text above cited (CCCCXXVI) ſhows, that brethren who have renewed coparcenary, excluſively inherit the wealth of a reunited brother, and this undivided property belonged to a reunited parcener.

The text of Na'reda (CCCCXXXIII) is thus read by Misra, "The veſted ſhare of reunited brothers is declared to belong excluſively to them; otherwiſe it ſhall go to their *mutual* heirs, or to others, if they leave no iſſue"† If there be no heir, whoſe claim is preferable to that of reunited parceners, the ſucceſſion devolves on them, although there be a diſunited claimant as near of kin, otherwiſe, that is, on failure of reunited parceners, the heritage goes to their *mutual* heirs, namely, to the ſons or other deſcendants of a reunited parcener Of two coheirs, who have renewed coparcenary, if one die childleſs, after the demiſe of the other who did leave male iſſue, the ſons of the reunited parcener inherit the eſtate ſuch is

* According to this gloſs, the text ſhould be otherwiſe tranſlated T.

† The difference of the reading is, *ato nyat hanſa bhójat tu*, inſtead of *ato nyathanaṅſa bhojah*

the

the meaning. If they leave no iſſue, that is, no ſon or other male deſcendant, it goes to others, namely to the widow and the reſt. Conſequently, in ſuch a caſe, the legal heirs of a reunited parcener ſhall alone take his inheritance; no others *ſhall take it*, neither diſunited parceners nor their legal heirs. *Some* lawyers ſo expound the text.

THE veſted ſhare of reunited parceners belongs excluſively to them; it appertains excluſively to reunited parceners: mentioned as grounds for ſhowing, that, on failure of them, the ſucceſſion devolves on others. Or it conveys a precept on the doubt whether all ſons may claim partition, becauſe the eſtate of the deceaſed was in effect wealth acquired by their father or by his anceſtors; and becauſe they are equally *his* ſons, *and therefore heirs* by the texts of DE'VALA and the reſt (V). Otherwiſe, that *is, on failure of reunited parceners, the ſucceſſion devolves on* their heirs, that is, *on* their *ſons and the reſt.* If reunited parceners die leaving no male iſſue, it goes to others, that *is to* diſunited coheirs. Such is the expoſition approved by MISRA. It may alſo go to any others whomſoever, according to the circumſtances of each caſe, conformably with the rules of deciſion abovementioned.

MISRA here obſerves, it is not the meaning of the firſt hemiſtich, that the ſame ſhare, which belonged to each at the time when reunion took place, ſhall be recognized and preſerved from him when partition is again made: for, in a community of goods by reunion with half the former wealth, the phraſe would bear a ſpiritual ſenſe, if ſuch were the ſtrict rule.

IN the *Párijáta*, the text is read, ſharers of the wealth of others than theſe *(atéʼnya dhanárśa bhájah)*. But that is rejected, as differing from many copies.

The *Retnácara.*

As for what is ſaid, in the text of CA'TYA'YANA (CCCCXXVII), on the ſubject of one taking the heritage on failure of the other, the legiſlator limits the precept, by ſaying, "if they have no progeny;" the meaning is, becauſe they reciprocally ſhare their eſtates, if they have no offſpring.

MISRA.

"LEAVING

"LEAVING no iſſue" is an expreſſion merely illuſtrative, comprehending one, who leaves no wife or the like. Hence a reunited brother, or other coheir, has no right of inheritance, if he, who has no ſon, leave a widow: and thus the doubt is removed, whether all ſons ſhall equally ſhare the eſtate, on the death of their father, who had made a partition with his children, and who was reunited with one of them, becauſe the leaving no iſſue is ſtated as a ground of a diſtinction relative to reunion; for, taking the term in a comprehenſive ſenſe, it muſt neceſſarily extend to brothers and the reſt; elſe a reunited uncle would inherit the wealth of his reunited nephew, although a brother exiſt. Therefore, on failure of preferable claimants, thoſe, among equal claimants, who were reunited with the deceaſed, inherit the wealth of a reunited parcener. Here again, in reſpect of brothers and the reſt, a diſtinction ſubſiſts, founded on texts of law, and relative to the whole and half blood: thus alſo it is neceſſary to take the word "iſſue" in MISRA's definition, as ſignifying preferable claimant; for it is ſaid, a diſunited ſon has no claim, if there be a reunited one. As for the argument, that, the word "ſeed" in the text above cited (CCCCXXVII) obviouſly preſenting the ſenſe of offſpring, it is conſiſtent with juſt reaſoning to conſider the diſtinction relative to reunion, as implying the failure of offſpring, there appears this objection to the argument; ſince it is a maxim, that, on failure of preferable claimants, thoſe, among equal claimants, who were reunited with the deceaſed, have a title to inherit, the independent condition "excepting ſons and the reſt," is troubleſome and groundleſs; for the term "leaving no iſſue" may bear the ſenſe abovementioned.

ther, a brother, or a father, are conſidered as the ſix fold *ſeparate* property of a *married* woman.

WHAT was beſtowed by any perſon whomſoever, before the nuptial fire, at the time of the marriage: "what was given on the bridal proceſſion;" that is, a preſent *following* a bride when ſhe is led to the houſe of her huſband: and what was given in token of love; that is, beſtowed by her father in law, or other perſon, whoſe affection is engaged by her good temper, probity, ſkill, and other good qualities. "Six fold" is mentioned to except a leſs, not a greater number; for a preſent given to a ſuperſeded wife, which is another ſort of ſeparate property held by a woman, is alſo mentioned by YA'JNYAWALCYA.

The *Retnácara.*

"WHATEVER is given;" here the perſon who makes *the gift* is not her father or other relation; for, were ſuch the meaning, it would ſimply intend "what was received from a mother, a brother or a "father." Therefore it means only what is given by any perſon whomſoever whether he be or be not allied by blood. Accordingly it is ſaid by the author of the *Retnácara*, 'given by any perſon whomſoever at the time of her marriage.' What friends alſo give, at the time of a girl's nuptials, in token of reſpect to the damſel, is her *ſeparate* property. As the practice ſubſiſts in this country for the friends of the bridegroom to give the woman ſome trifle in token of reſpect, ſo it appears, that a practice ſubſiſts in ſome countries for the friends of the bride's father to give the damſel ſome trifle.

THE ſame legiſlator explains a preſent given on the bridal proceſſion.

CCCCLXV.

CA'TYA'YANA:—WHAT a woman receives from the family of her parents, while ſhe is led to the houſe of her huſband, is called the property of a woman "given at her proceſ- "ſion."

WHAT is given by any perſon whomſoever, in honour of a bride going from the houſe of her father to the manſion of her huſband, is a preſent given at her proceſſion. Accordingly the author of the *Retnácara* has ſaid, 'a preſent following a bride.' What is given on account of a bride going in proceſſion, is given at her back; for ſhe goes before, and properly the gift follows her. Such is the popular language.

DOES her proceſſion to the houſe of her huſband conſiſt in going thither at the time of the nuptial ceremony, or at that of the *final* proceſſion of both *bride and bridegroom to the huſband's houſe*, or at any other time? On this point nothing has been ſaid by the author of the *Retnácara*. But MISRA affirms, 'at the time of the final proceſſion of both *bride and bridegroom to the huſband's houſe*.' On the other hand, JI'MU'TAVA'HANA, not finding that preſents are given by friends, to a bride, while ſhe is led from the houſe of her father to

the abode of her husband, interprets the text otherwise; 'what a woman receives from the family of her father or mother, while she is led to the house of her lord.' It must be considered that the same sense being deduced from the phrase "what was received from a brother, or a mother, or a father," the separate mention of a present given on the bridal procession would be fruitless.

WHAT was given *in token of affection* by her father in law and the rest. Such is the interpretation of "given" according to the *Ratnácara*. MISRA remarks on the three sorts of property bestowed by a mother and the rest, that the meaning is obvious. The agent in the phrase, "given in token of love," may be the family of her husband; "what was given to a woman by his family:" it may therefore comprehend what is received by a woman on the second marriage of her lord. "Mother" is a term illustrative of the family of her mother, and so is father illustrative of his family. "Brother" is again mentioned, to denote his preeminence, by the same rule, by which two names of kine are at once used in a general and particular sense.

THUS, since there is no separate property of women different from those six sorts, it may be objected to the opinion delivered in the *Ratnácara*, that it was useless to say, '*the enumeration is intended* to except a less number.' By parity of reasoning the same objection may be also made to what has been said by MISRA and others, "it is intended to except a less number."

CCCCLXVI.

CA'TYA'YANA:—ANY thing which is given to a woman by the mother or father of her husband in token of affection, and that, which is given in return of her humble salutations, is called wealth gained by loveliness.

"LOVELINESS" consists in good temper, skill *in feminine arts*, and the like. *A present in token of affection*, and what is given by the father or mother of her husband, to a woman endowed with good temper and other amiable qualities, and who humbly salutes their feet, constitute the third sort of exclusive property.

MISRA.

SINCE

SINCE a preſent, given through affection, is ſeparately mentioned by CA'TYA'YANA, does it not follow, that a preſent given by her huſband is not the ſame with one beſtowed through affection? No; for her huſband and others may alſo be included in the text, ſince the particle "or" is uſed indeterminately in the expreſſion, "by the mother or father of her huſband;" and there is no difficulty in conſidering the laſt hemiſtich of the verſe as a ſeparate phraſe: for the ſenſe of the text is this; what is given by the mother of her huſband, and by *certain* other perſons, is beſtowed through affection; and what is obtained by lowly ſalutations, is acquired by lovelineſs. The whole cannot be taken as a ſingle phraſe, bearing this ſenſe, 'what is given by the mother of her huſband, and by *certain* other perſons, is a return for humble ſalutations, and that alone is called the acquiſition of lovelineſs;' for one of the relatives would be unmeaning. It ſhould not be objected, that a preſent, given in token of affection, alone conſtitutes the third ſort of *excluſive* wealth; and that a gift to a ſuperſeded wife is not a preſent given in token of affection, becauſe it is received by the woman when diſpoſed to wrath and the like by reaſon of the ſecond marriage of her lord. Still the preſent cannot be given without tenderneſs; for her huſband is moved to affection by her aſſent to his ſecond marriage: and the difficulty is removed by conſidering the term "in token of affection" as merely illuſtrative.

YA'JNYAWALCYA explains a preſent given to a woman on the ſecond marriage of her lord (LXXXVII). She, above whom a marriage is contracted, is a ſuperſeded wife *(adhibinná)*. So the *Retnácara*. *Adhi* is therefore uſed in the ſenſe of above; and *bédana*, in the ſenſe of taking a bride, according to the literal meaning of the verb *bidrĭ*, take. Conſequently the ſecond marriage of her huſband is ſuperſeſſion of a wife; and a preſent received on the ſecond marriage *of her lord* ſhall be ſo much only, as is promiſed *to conſole her* for the ſuperſeſſion. "But, if *ſuch* wealth, *as is uſually given to women*, had been delivered to her, ſhe is held entitled only to a moiety or part;" that is, the ſum promiſed ſhall be completed by wealth previouſly and ſubſequently beſtowed. If a larger ſum had already been given, ſome trifle muſt be delivered to fulfil the promiſe of a preſent.

So

So much only, as is given to the wife who is now eſpouſed, muſt be given to the wife who is ſuperſeded.

SRI' CRI'SHNA TERCA'LANCA'RA.

THE word "equal" ſignifies ſo much only as is expended on the ſecond marriage.

VIJNYA'NE'SWARA.

IN the ſecond * of theſe three expoſitions there is *this* defect; not ſhe, but another woman, is the perſon to whom the ſum promiſed is given; and it would not be a preſent on ſuperſeſſion by the ſecond marriage of her lord, ſince ſuperſeſſion is not the cauſe of giving that ſum: neither is the ſecond marriage the *immediate* cauſe of giving a preſent to the firſt wife. When the ſecond nuptials have taken place, and nothing has been expended on them, ſince nothing would in that caſe be given according to this *(third)* opinion, the ſecond marriage, jointly with the expenſe of it, is not the *immediate* cauſe *of giving a preſent to the woman:* her being the firſt wife is the ſole cauſe. Thus there is no certainty in theſe two interpretations. It cannot be a poſitive precept, that the term "equal," though parity be always requiſite, ſhall refer only to the amount expended or the like. Again: if that, which is given to a ſecond wife endowed with preeminent qualities, muſt alſo be given to the firſt wife, this would contradict common ſenſe. A rule of practice ſhould be formed on due conſideration *of theſe difficulties.*

CCCCLXVII.

VISHNU:—THE property of a female is that, which her father, mother, friend, or brother has given her; what ſhe received in the preſence of the nuptial fire; *on the bridal proceſſion*; or when her huſband took a ſecond wife; what her huſband agrees to be her perquiſite; and what is received from his or her kinſman as a gift ſubſequent to the marriage.

IT ſhould not be argued, becauſe more than ſix ſorts of property are men-

* The manuſcript has "firſt;" but the objection is only applicable to the ſecond. T.

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tioned in this rule of VISHNU, that the text of MENU muſt neceſſarily be conſidered as an exception of the leſs number. Friends and the reſt are comprehended in "the family of her father." "Received" *(upagata)* may ſignify what is beſtowed on account of her coming, that is, a preſent given on the bridal proceſſion. The preſent, received when her huſband took a ſecond wife, muſt be reconciled, in the mode abovementioned, *with one of the other ſorts enumerated.* Her perquiſite and a gift ſubſequent are in effect given by her huſband and the reſt.

CCCCLXVIII.

CA'TYA'YANA:—WHAT is received by a woman, after marriage, from the kinſmen of her lord or from thoſe of her parents, is called "a gift ſubſequent:"

2. But BHRĬGU gives the name of "ſubſequent gift" to any thing received by her after the nuptial ceremony, from her huſband himſelf, or from her parents, through pure affection.

3. THE trifle, which is received by a woman as the price *or reward* of houſehold *labour*, of *uſing houſehold* utenſils, of *keeping* beaſts of burden, of *watching* milch cattle, of *preſerving* ornaments of dreſs, or of *ſuperintending* ſervants, is called her "perquiſite."

CONSEQUENTLY what is received after marriage, from the family of her huſband, mother, or father, and what is received from her huſband himſelf, from her mother, or from her father, is a gift ſubſequent. Such is the explanation approved by JI'MU'TAVA'HANA. To include a preſent given before marriage *in the enumeration of ſeveral property*, what was given by the mother, father, or brother, has been already mentioned. It ſhould not be objected, that ſtill the word "ſon" in the rule of VISHŇU, as read by MISRA, ("that which her father, mother, ſon, or brother has given her;") is unmeaning. That word may ſignify ſon by another wife of her huſband.

the life of their father, or on a diſtribution among brothers *after his demiſe*. Or elſe, upon the reaſoning delivered under the title of ſubtraction of gift, if the ſole property of the wife be acknowledged, and her independent power over it *be* alſo *admitted* on the ſuggeſtion of JI'MU'TAVA'HANA, then likewiſe that wealth is, inconteſtably, wealth given by her father. But 'SU'LAPA'NI, CULLU'CABHATTA and the reſt admit, that the preſents received before the nuptial fire, ~~or on the~~ bridal proceſſion, may have been given by her father and the reſt. Here, ſince it is improper to bar the comprehenſion of ſtrangers in the term "and the reſt," preſents received before the nuptial fire, or on the bridal proceſſion, are diſtinct from thoſe which are given by her father and other relatives. Conſequently the ſeparate property of married women is inconteſtably ſix fold. What was received from a father, and what was obtained from a mother, are therefore two ſorts of ſeparate property; what was given by a brother or by a kinſman, is one ſort; *thoſe* and what was obtained from the family of her huſband, a preſent accepted before the ſacrificial fire, and one received on the bridal proceſſion, are ſix ſorts of ſeparate property held by women.

JI'MU'TAVA'HANA explains "given by a kinſman," beſtowed by a maternal uncle or the like. 'SU'LAPA'NI expounds it, given by a kinſman of her mother, or by a relation of her father. Only ſix ſorts of ſeparate property held by women are *yet* ſeen, how *then is it ſaid*, this *is* an exception of a leſs number?

NA'REDA alſo propounds ſix ſorts of ſeparate property held by women.

CCCCLXIX.

NA'REDA:—GIFTS to a woman at the nuptial fire, at her proceſſion, by her huſband, her brother, her father, or her mother, conſtitute her ſix fold property.

A GIFT by her huſband includes the preſent given in token of love, as propounded by MENU. Again; huſband, and other terms expreſſive of connexion or relation, ſignify alſo their families: but the word "brother" denotes kinſman, as in a former inſtance; or it literally ſignifies "brother,"

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the conſequent repetition being juſtified by the ſame rule, by which two names of kine are at once uſed in a general and particular ſenſe.

CCCCLXX

CATYA'YANA:—BUT whatever wealth ſhe may gain by arts, *as by painting or ſpinning*, or may receive, on account of friendſhip, from any but the kindred of her huſband or parents, her lord alone has dominion over it of her other property ſhe may diſpoſe *without firſt obtaining his aſſent.*

" ARTS ' in this text, is expreſſed in the plural number with the ſenſe of " and the reſt. ' Conſequently her huſband has independent power over all other wealth except the ſix fold property of a woman What then is the rule in reſpect of an eſtate devolving on her from her father or other relative *on failure of male heirs?* It ſhould not be anſwered, *ſhe is ſubject* to the control of her huſband, even in reſpect of this eſtate, becauſe it is not included in the ſix fold property of women Since the eventual heir of her father and the reſt is, at a ſubſequent time, ſole heir of wealth which had devolved on her from her anceſtors, it contradicts common ſenſe, that this ſhould be ſubject to the control of her huſband To the queſtion thus propoſed, the anſwer is, it is ſubject to his control, ſo long only as it remains in the poſſeſſion of his wife, afterwards it ſhall be received by the legal heir of her father and the reſt.

ON the opinion of thoſe, who acknowledge the ownerſhip of her huſband in wealth acquired by his wife, not ſimple control over it, how can the legal heirs of her father ſucceed on the death of the wife, ſince her huſband's title is not deveſted ſo long as he live? In truth JIMUTAVAHANA alone contends for the ſucceſſion of her father's heirs, after the death of the daughter, to the patrimony, which devolved on her *by the failure of male iſſue*, and he does not acknowledge the property of the huſband in the wealth of his wife but thoſe, who do acknowledge the huſband's claim, muſt not admit the ſucceſſion of her father's heirs to the patrimony, which has devolved on the daughter, for no text nor reaſoning ſhows it.

As

As for the argument, that, ſince this occurs in the ſucceſſion of a wife, who is the firſt entitled to the eſtate of one who leaves no male iſſue by males, the ſame ſhould be alſo eſtabliſhed in other caſes, when a daughter or the like has ſucceeded, that argument would be alſo intruded in other remote caſes, *ſuch as the* ſucceſſion of a daughter's ſon, or of a brother, and that is not founded on poſitive ordinances, but eſtabliſhed by authors on the ſole ſuggeſtion of their own underſtandings it is not even noticed by CHANDESWARA and the reſt On the opinion of thoſe, who maintain the property of both *huſband and wife* in her wealth, there is no difficulty whatſoever, for it may be eſtabliſhed, that the huſband's title is loſt on the *diveſture of his wife's.*

" FROM any other " (CCCCLXX), in that, which is received from any but the kindred of her father, mother, or huſband, and in that, which is acquired by arts, her huſband has ownerſhip, and has independent power over it, that is, he may with propriety ſeize it, even though ſuffering no diſtreſs Hence, though it belong to the woman, it is not her ſeparate property *in contemplation of law*, for ſhe is not independent It is a remark of JI'MU TAVA HANA, RAGHUNANDANA and the reſt, that a wife has property ſubject to the control of her huſband, in wealth devolving on her *from her own family.* That it becomes the property of her huſband, is ſtated as the opinion of ancient authors But ſome lawyers argue, that the eſtate of her father, devolving on his daughter *by the failure of male iſſue*, becomes her ſeparate property, for the patrimony, which devolves on a daughter *by the failure of male iſſue*, is not mentioned in the text above cited (CCCCLXX); and a ſubſequent precept of CA'TYAYANA (CCCCLXXV) ſtates ſimply " what a woman receives " and this, they hold to be the meaning of JIMU'TAVA'HANA himſelf.

THAT *firſt inſtruction* we do not admit, for it is no where ſeen, that a woman has independent power over any thing which is not given to her the expreſſion, " of her other property ſhe may diſpoſe," (CCCCLXX), declaring that only to be the *ſeparate* property of a woman, over which her huſband has not independent power, it is *a* juſt *inference*, that he has ſuch power over that only, which is different from the ſix fold property *of women* as

propounded by MENU and the reſt. But, if it be affirmed as the opinion of JI'MU'TAVA'HANA, that "this is a third kind of property;" (thus wealth, over which a woman has independent power, and which is called her ſeparate property, is the firſt kind; that, which was acquired by arts or the like, and which is ſubject to the control of her huſband, is the ſecond kind; the wealth, which has devolved on her *from her anceſtors*, is the third ſort, and both *huſband and wife* have independent power over it): that could only be admitted, *as the opinion of* JI'MU'TAVA'HANA, if it were confirmed by reaſoning; but it contradicts common ſenſe. It has been thus remarked in books, that the obſervation of authors, 'the enumeration is only intended to except a leſs number,' is thus contradicted; for *all* ſorts of *excluſive* property held by women, fall within the ſix denominations which have been mentioned. The obſervation, that the intention is to except a leſs number, is not pertinent; for the ſix ſorts of property are deſcribed by their reſpective names. Nor is it to the purpoſe, that the ſame CA'TYA'YANA, who declares the property of women to be ſix fold, exhibits a greater number; for his meaning is, that every thing, which is received by a woman, before or after marriage, from her father, or from his relations, or from the family of her huſband, is her property given by affectionate kindred. The object of this *remark* is the food, veſture, and the like, which will be declared *to be the excluſive property of a woman.*

SOME lawyers hold, that the number ſpecified is affirmed to be an exception of a leſs one, becauſe the perquiſites, mentioned in the text of DE'VALA (CCCCLXXVIII) and *in a precept of* VISHNU above cited (CCCCLXVII), conſtitute an additional ſort *of excluſive property*: for example; according to the interpretation of JI'MU'TAVA'HANA, what is given as a bribe to a woman, by houſeholders, by artiſans, or by others, to ſend her huſband and the reſt to perform work required by them, is her perquiſite; it is the price *or reward* of labour, becauſe the purpoſe is to entertain *a labourer*. The expoſition delivered in the *Retnácara* is ſimilar: but the interpretation of MISRA ſhould be followed. Conſequently this wealth, being given by others than the kinſmen of her father and the reſt, does not fall within the ſix fold property *of women*. It ſhould not be anſwered, this is only intended by the text "whatever ſhe may receive, on account of friendſhip,

friendſhip, from any but the kindred of her huſband and parents" (CCCCLXX). That phraſe is only applicable to a different caſe.

To the argument of theſe lawyers, the anſwer is, if perquiſite, which is an obſcure term, can by any interpretation be included in the ſix ſorts of property, why ſhould the texts of ſages be otherwiſe expounded by affirming an unuſual ſort *of property* exceeding that enumeration? For what a kinſman, being much pleaſed with her management of houſehold affairs, beſtows on a woman, is her perquiſite; as that, which is given in return for humble ſalutation, is her property gained by lovelineſs: theſe and other acquiſitions may be conſidered as diſtinct ſorts of wealth given by her huſband's father and the reſt.

THE ſenſe of the text (CCCCLXX) is this; what is received by a woman, on account of work in houſehold affairs and ſo forth, is the price of her labour, as it were, her wages (for ſuch is the ſubject of the text); what is *ſo* given to a woman, is called her excluſive property under the name of perquiſite. Here "houſe" is obvious; "houſehold utenſils" are brooms and ſimilar things; "beaſts of burden" are oxen and the like; "milch cattle" are cows and the reſt; "ornaments of dreſs" are things worn for decoration; workmen are ſlaves *or ſervants:* the meaning in effect is, what is given through ſatisfaction at her ſkill in ſweeping *with brooms,* in keeping and watching cattle and the reſt, in commanding the ſlaves, and ſo forth; or what is given as a bribe to undertake theſe ſeveral employments. But VYA'SA otherwiſe defines a perquiſite *(ſulca).*

JI'MU'TAVA'HANA.

CCCCLXXI.

VYA'SA:—THAT, which is given to bring *the bride* to the family of her huſband is her perquiſite, which is given as a bribe or the like, that ſhe may cheerfully go to the manſion of her lord.

WE *hold, that authors have otherwiſe expounded the texts of legiſlators,* conſidering that alſo as the excluſive property of women, which is given to

wives

Wives and others as a bribe to ſend *their huſbands and the reſt* to perform work, *ſuch as* thatching a houſe and the like; or *they have delivered ſuch an expoſition*, admitting ſome difference in the gifts ſubſequent *to marriage*, which have been ſpecially defined. The difference in the two interpretations ſhould be examined; no argument is found *to ſhow* why a woman ſhould not have independent power over that, which ſhe has gained by arts, or which has been given to her by a ſtranger on a religious conſideration or through friendſhip, but ſhould have independent power over *that which was received as* a bribe.

" Food and veſture;" what is given for her ſupport: this coincides with a ſubſequent text (CCCCLXXV 2). " Ornaments;" ornamental apparel. " Perquiſites;" what is given to a damſel on aſking her in marriage. " Wealth received;" that which is obtained from a kinſman. All *this is the exclusive property of a woman.*

MISRA and CHANDE'SWARA.

THE perquiſites, which have been already explained, may be alſo underſtood *to be meant.*

CCCCLXXII.

APASTAMBA:—ORNAMENTS are the excluſive property of a wife, and ſo is wealth given to her by kinſmen or friends, according to ſome *legiſlators.*

THE meaning is, 'wealth, given *to her by friends, is the exclusive property of the wife.*' " According to ſome legiſlators;" this is mentioned to ſhow a regulated alternative: what is given by kinſmen on the marriage of their relative, at the time of the nuptial ceremony or the like, is the excluſive property of a woman; but her lord has dominion over that, which is preſented at any other time. Accordingly CHANDE'SWARA remarks on the phraſe, " and ſo is wealth given *to her by kinſmen or friends*, according to ſome legiſlators," that wealth received at the nuptial *ceremony*, which is called a preſent given on account of marriage, is alſo the *exclusive* property of a wife.

CCCCLXXIII.

MENU and VISHNU, on the ſubject of ornaments:—SUCH ornamental apparel, as women wear during the lives of their huſbands, the heirs of thoſe huſbands ſhall not divide among themſelves, they, who divide it among themſelves, fall deep *into ſin.*

THAT ornamental apparel, which is worn by women during the lives of their huſbands, with their aſſent, the ſons and the reſt ſhall not divide when partition is made after the death of thoſe huſbands, they, who divide it, become ſinners.

CULLU'CABHATTA.

IN ſo much only is that ornamental apparel the excluſive property of a wife So the *Meabatu'bi*, the author of the *Pracása*, CHANDE'SWARA, VA'CHESPATI MISRA, RAGHUNANDANA, and others.

THE aſſent of her lord is indiſpenſably neceſſary, and it is alſo requiſite, that this apparel ſhould have been the ſeveral property of her huſband, as declared by MENU

CCCCLXXIV.

MENU —A WOMAN ſhould never make a hoard from the goods of the kindred, *which are* common *to her and* many: or even from the property of her lord, without his aſſent.

WIVES and other women ſhould never make a hoard for their own ornamental apparel and the like, out of the wealth of the family, *which is* common to many, *namely* to brothers and the reſt, nor ſhould a hoard be made even from the property of her huſband, without his acquieſcence hence this does not become the excluſive property of the woman

CULLU'CABHATTA.

BY ſaying "women ſhould never make a hoard," it is forbidden to take ſuch goods, but it is not ſuggeſted, that, if the chattels be taken, the object

is unattained: why then is it said, 'this does not become the excluſive property of a woman?' The anſwer is, ſince a right cannot be gained, if ſhe take the effects without the aſſent of the owner, this does not become her excluſive property: but, if none afterwards moleſt the woman, who has ſo taken the goods, a title is gained by occupancy; for the maxim expreſſes, "what is not forbidden, is permitted." *Elſe, the enunciation of the text* would be ſuperfluous, ſince gift could only take place by expreſs aſſent in theſe words, 'be this thine.' Or the ſenſe of the text may be this; a title is only gained by aſſent thus expreſſed, "wear this apparel." It ſhould not be objected, how can it become her property, ſince ſhe has not acquired it? Habitual wear is conſidered as a mode of acquiſition under the authority of the text. When another does not oppoſe the uſe of that apparel, the *tacit* permiſſion of wearing it exiſts; *elſe why is it not reſiſted?* But, if he do not oppoſe it, fearing to arouſe anger or to cauſe a breach of friendſhip, then indeed it does not become the property of the woman, notwithſtanding ſuch ſilent aſſent.

BUT CHANDE'SWARA, *referring the word goods* to the proximate term family or kindred, ſays, women ſhould not make a hoard, or deliberately take wealth, out of goods common to many, without the aſſent of the owners, nor even take it from the property of her huſband which is not common to him and another family, without the aſſent of the owner. It follows that, if ſhe take it from property *belonging to a numerous family*, by *conſent of all the* owners, it legally becomes her excluſive property: but that is not deduced from the literal ſenſe of the text; and is therefore unacknowledged by CULLU'CABHATTA. It ſhould not be argued, this is ſuggeſted by the precept, "the heirs of thoſe huſbands ſhall not divide it among themſelves;" becauſe otherwiſe, it could not be ſuppoſed, that apparel, being the ſole property of her lord, might be divided by other heirs, and the prohibition would therefore be unmeaning. Heirs may here ſignify ſons; it is conſequently ordained, that ſons ſhould acknowledge ornamental apparel worn *by the woman* with the aſſent of her lord, to be the excluſive property of their moſher. It is declared by MENU and VISHNU (CCCLXIII), that ornaments, worn by mutual conſent, are indiviſible. From the concurrent import of theſe texts, CHANDE'SWARA has affirmed this. Conſequently

quently thoſe ornaments, which are worn by the wives of coheirs with their mutual conſent, become the excluſive property of thoſe women.

If one brother have conceded ornamental apparel to the wife of another; and afterwards that other brother, *namely* the huſband of the woman, who is already provided with ſuch apparel, refuſe to concede ornaments to the wife of that *firſt* brother, what ſhall be the conſequence? The ornaments already worn by one have legally become indiviſible property under the authority of the text (CCCLXII); the king, however, ſhall compel the conceſſion of ſuitable ornaments to the wife of the *firſt* brother; or elſe when partition is finally made, a ſufficient ſum muſt be firſt ſet apart to provide ſuch ornaments, and they may then proceed to partition. But, if they be deſtitute of wealth, when a ſeparation takes place, another rule muſt be followed.

Such is the nature of excluſive property held by women; they, not their huſbands and the reſt, have independent power over it, as owners of that property: the following texts declare it.

CCCCLXXV.

Ca'tya'yana:—What a woman, either after marriage or before it, either in the manſion of her huſband or of her father, receives from her lord or her parents, is called a gift from affectionate kindred;

2. And ſuch a gift, having by them been preſented through kindneſs, that the women poſſeſſing it may live well, is declared by law to be their abſolute property:

3. The abſolute excluſive dominion of women over ſuch a gift is perpetually celebrated; and they have power to ſell or give it away, as they pleaſe, even though it conſiſt of lands and houſes.

4. Neither the huſband, nor the ſon, nor the father, nor the

the brother, have power to uſe or to aliene the legal property of a woman;

5. And, if any of them ſhall conſume ſuch property againſt her own conſent, he ſhall be compelled to pay its *value with* intereſt to her, and ſhall alſo pay a fine *to the king;*

6. But, if he conſume it with her aſſent, after an amicable tranſaction, he ſhall pay the principal only, when he has wealth *enough* to reſtore it*.

7. WHATEVER ſhe has put amicably into the hands of her huſband afflicted by diſeaſe, ſuffering diſtreſs, or ſorely preſſed by creditors, he ſhould repay that by his own free will.

"IN the manſion of her huſband;" the words are ſo connected. "From her brother † or her parents;" this is merely illuſtrative: hence, what is received by a woman, either after marriage or before it, in the manſion of her huſband, or in the houſe of her father, from her mother, from her father, or from other *perſons*, is *called* a gift from affectionate kindred.

CHANDE'SWARA.

MISRA delivers a ſimilar expoſition; but, inſtead of ſaying "from other perſons," he ſays from her own kindred or from the relations of her lord. There is this difference.

THAT, which is received from affectionate kindred *(ſudáya)*, is the gift of affectionate kindred *(ſaudayica)*.

JI'MU'TAVA'HANA.

THAT, which is received from an affectionate father, mother, or huſband, or from the kindred of theſe, is a gift from affectionate kindred. "Through kindneſs;" through tenderneſs.

RAGHUNANDANA.

* Book I. ▼ LXXIII.

† In a former citation the text was read "huſband" *(bhartuh* not *bhratuh)* T.

SUCH

Such a gift is declared by law to be the abſolute property of a woman. She may therefore conſume it without the aſſent of her huſband or guardian. As for the remark, that the abſolute excluſive dominion of women over ſuch property is an explanatory precept, whence it follows, that their huſbands have not abſolute dominion over that property, and that the legiſlator himſelf ſo explains his meaning (CCCCLXXV 4); the remark is erroneous, for it would contradict the deſign, to propound an explanatory precept without firſt delivering a text ſuggeſting the abſolute dominion of women over ſuch property. That a precept is explanatory is deduced from the priority of another ordinance.

The legiſlator next declares, that a woman may ſell or give away her own ſeparate property, without the aſſent of any other perſon (CCCCLXXV 3); "even though it conſiſt of lands and houſes." A woman has abſolute excluſive dominion over ſuch gifts conſiſting of lands and houſes, except ſuch immoveables as her huſband gave her. The *Retnácara.*

Na'reda propounds this exception of ſuch immoveables as her huſband gave her.

CCCCLXXVI.

Na'reda:—Property, given to her by her huſband, through pure affection, ſhe may enjoy at her pleaſure, after his death; or may give it away, except land or houſes.

But ſome lawyers, conſidering the two ſubjoined texts of Ca'tya'yana as relating to the ſeparate property of women, becauſe they are placed under that title, affirm, that the precepts muſt be thus expounded; wealth given by her huſband, even though it conſiſt of gems and the like, ſhe muſt not, while he lives, give to any perſon, nor intruſt it to another; by the authority of the text. But immoveable property ſhe muſt not give to any perſon whomſoever, even after the death of her huſband.

CCCCLXXVII.

Ca'tya'yana:—What a woman has received as a gift from

her huſband, ſhe may diſpoſe of at pleaſure, after his death, *if it be moveable;* but, as long as he lives, let her preſerve it with frugality: or ſhe may commit it to his family.

2. THE childleſs widow, preſerving inviolate the bed of her lord, and ſtrictly obedient to her ſpiritual parents, may frugally enjoy *the eſtate* until ſhe die; after her, the legal heirs ſhall take it.

"THE childleſs widow;" conſidering that the ſeveral property of a woman may be reſumed, if ſhe do not preſerve unſullied the bed of her lord (CCCCV2), the legiſlator propounds this text. This maxim being true in reſpect of the ſeveral property, over which a woman has excluſive dominion, the ſame is equitable in reſpect of an eſtate devolving on her by the failure of male iſſue. Or this text may not ſolely relate to the peculiar property of a woman, but to any effects which ſhe holds as ſuch thus according to CHANDE'SWARA and the reſt, there exiſts a coincidence with the laſt text; but, according to JIMUTAVA'HANA, with both. Theſe lawyers ſo expound the law.

THE author of the *Pracáśa* announces the opinion of CHANDE'SWARA. HELAYUDHA and the *Párijata* ſay, both theſe texts relate to the peculiar property of a woman, becauſe they are placed under that title. Gems and the like, given by her huſband, muſt not be alienedwhilſt he lives, thoſe, which belonged to him, but devolve on her by failure of male iſſue, and both ſorts of immoveables which had belonged to her huſband, muſt never be alienedby a woman, ſuch is the opinion of JI'MU'TAVA'HANA. Gems and the like given by her huſband, or which have devolved on her from him, in default of male iſſue, a woman may give away at pleaſure, both ſorts of immoveable property, which had belonged to her huſband, ſhe muſt not give away, but ſhe may enjoy it under the text which declares property common to the married pair, all effects belonging to her huſband, which ſhe has received, ſhe muſt preſerve with frugality as long as he lives: ſuch is the opinion of ÇHANDE'SWARA and the reſt. Theſe opinions ſhould be reviewed by the wiſe.

WHAT

WHAT is acquired by the wife, during the ſtate of deprivation of her huſband, is alſo her peculiar property. How can it be ſo, ſince it is excluſive of the ſix ſorts? *The anſwer is*, authors do not acknowledge the *reſtrictive* enumeration of ſix kinds; and even though it were admitted, the difficulty would be removed by affirming, *that* this maxim *is true* of a woman, who is herſelf ſole miſtreſs *of the wealth acquired*. Who has a right to that which is acquired by a woman before marriage? A daughter may be alſo comprehended in a text formerly cited (Book III, Chap. I, v. LII 1), becauſe the maſculine gender is not there uſed in a determinate ſenſe, or becauſe the particle "and" connects the terms with that, which is unexpreſſed; or laſtly becauſe the term "*ſon*" is illuſtrative *of a general meaning;* her father has therefore property in the wealth acquired by her, as he has a claim to the ſon produced by her before marriage: ſuch is the method founded on the opinion of ancient authors. It ſhould be thoroughly examined by the wiſe.

BUT, according to JI'MU'TAVA'HANA, all wealth acquired by a woman is held by her as her excluſive property; as that, which is gained by a married woman, is ſubject to the control of her lord, ſo is wealth acquired by an unmarried woman ſubject to the control of her father, becauſe ſhe alſo belongs to her ſire: hence, though *ſubſequently* married, ſhe alone can enjoy or alienе ſuch wealth with the aſſent of her father. But, after the death of her huſband, no perſon has dominion over a widow; her ſpiritual parent, that is, her father in law, or other guardian, merely ſupports her: hence ſhe has abſolute power over that, which ſhe then acquires. This ſhould be held demonſtrated.

THE legiſlator declares, that her huſband has no power to uſe or aliene the legal property of a woman (CCCCLXXV 4). On this ſubject DE'VALA propounds a ſpecial rule.

CCCCLXXVIII.

DE'VALA:—FOOD and veſture, ornaments, perquiſites, and wealth received by a woman *from a kinſman*, are her own property: ſhe may enjoy it herſelf; and her huſband has no right to it, except in extreme diſtreſs:

2. If

2. If he give it away on a falſe conſideration, or conſume it, he muſt repay the value to the woman with intereſt; but he may uſe the property of his wife to relieve a diſtreſſed ſon.

" Food and veſture;" funds appropriated to her ſupport. " Ornaments;" ornamental apparel. " Gain, or wealth received;" that which is obtained from kinſmen. " Perquiſites," wealth given to a damſel on aſking her in marriage.

The *Retnácara* and *Chintámeni*.

Both ſorts of perquiſites mentioned by Ca'tya'yana, and other kinds *of excluſive property held by women*, muſt alſo be comprehended in the text: this *ſort* is mentioned by both commentators to ſhow, that this alſo is her perquiſite; other kinds of female property muſt be comprehended in the text; conſidering the terms of it as illuſtrative of a general meaning.

When a huſband, *taking the property of his wife* under pretence of ſome indiſpenſable duty or the like, gives it away on immoral conſiderations, or conſumes it, he muſt repay the value with intereſt: but the property of a woman may be taken without her aſſent to relieve a diſtreſſed ſon.

The *Retnácara*.

Conſequently intereſt muſt be paid *on the property of a woman, which* is taken, after an amicable tranſaction, for the purpoſe of giving it away on immoral conſiderations; without the conſent of women, their property muſt not be aliened on ſuch conſiderations, nor conſumed; but that may be done to relieve a ſon.

The *Chintámeni*.

" He may conſume it;" hence it is deduced, that, although it bear no intereſt, it need not be repaid. The ſubjoined text makes this evident.

CCCCLXXIX.

Ya'jnyawalcya:—If a huſband, in a famine, or for the performance

performance of ſome indiſpenſable duty, or during extreme illneſs, or while a creditor keeps him confined, ſhould appropriate the wealth of his wife, he ſhall not, *while his diſtreſs laſts*, be compelled to reſtore it againſt his will.

FOR ſome duty, which muſt indiſpenſably be performed. The wealth of his wife taken to obtain relief in extreme illneſs, which prevents the performance of a duty, need not be repaid to her.

The *Retnacara*.

"PREVENTING" is an epithet of illneſs; the meaning is, precluding the performance of a duty Conſequently the ſeparate wealth of his wife, taken by the huſband, to accompliſh the performance of an indiſpenſable duty, which cannot otherwiſe be fulfilled, need not be repaid againſt his will.

The *Vivada Chintámeni*.

SOME lawyers add, what is taken in the diſtreſs of a ſon, even though it be not ſuch as to prevent *the performance of duties*, the huſband need not reſtore againſt his will, for the epithet "preventing" does not occur in the text of DE'VALA: that only, which is taken to obtain relief from ſuch diſeaſe, afflicting, any other than a ſon, which does impede *the performance of duties*, need not be repaid.

IN the *Dipacalica* the term is explained, while a creditor keeps him confined, preventing his eating and ſo forth. It is ſuppoſed in the *Dipacalica*, that extreme illneſs is here deno'ed by the word diſeaſe. Conſidering this phraſe as illuſtrative of a general meaning, CHANDESWARA holds, that confinement by a creditor is comprehended *in the text*: conſequently the purport of both commentaries is the ſame. In fact, whenever the performance of duties is impeded, a huſband need not reſtore the wealth of his wife then taken on failure of other means of relief. Since the word "huſband" is here exhibited, this rule relates to him alone, and to no other perſon. This ſhould be held demonſtrated. JI'MU'TAVA'HANA fur-

2. If he give it away on a falſe conſideration, or conſume it, he muſt repay the value to the woman with intereſt; but he may uſe the property of his wife to relieve a diſtreſſed ſon.

"FOOD and veſture;" funds appropriated to her ſupport. "Ornaments;" ornamental apparel. "Gain, or wealth received;" that which is obtained from kinſmen. "Perquiſites," wealth given to a damſel on aſking her in marriage.

The *Retnácara* and *Chintámeni*.

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The *Retnácara*.

CONSEQUENTLY intereſt muſt be paid on the property of a woman, which is taken, after an amicable tranſaction, for the purpoſe of giving it away on immoral conſiderations; without the conſent of women, their property muſt not be aliened on ſuch conſiderations, nor conſumed; but that may be done to relieve a ſon.

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FOR ſome duty, which muſt indiſpenſably be performed. The wealth of his wife taken to obtain relief in extreme illneſs, which prevents the performance of a duty, need not be repaid to her.

The *Retnácara*.

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ther obſerves, a huſband, unable to ſubſiſt in a famine or the like without uſing the property of his wife, may then, but at no other time, appropriate her wealth

" AND, if any of them ſhall conſume ſuch property &c' (CCCCLXXV 5), any one of them, her huſband, her ſon, or any of the reſt their puniſhment ſhould, according to circumſtances, conſiſt in harſh reproof or the like But MENU directs, that others ſhall ſuffer the puniſhment of a thief.

CCCCLXXX

MENU —WHETHER barren, or deprived of their ſons, or deſtitute of kindred, the care of faithful wives muſt be the ſame, and of women whoſe huſbands are abſent, or who ſuffer diſtreſs.

2. On thoſe men, whether kinſmen, or others, who ſeize the property of ſuch women, while they live, a virtuous king, muſt inflict the puniſhment of a robber.

" BARREN, ſterile conſequently, barren women, thoſe, who have loſt their ſons and have no kinſmen on the father's, mother's, or huſband's ſide, and married women, who are faithful to their lords, muſt be ſo protected, that is, muſt be cheriſhed like infants and ſo muſt women, whoſe huſbands are abſent, or who have been forſaken by them without juſt cauſe On thoſe men, who ſeize their property by force or fraud, while they live, a virtuous king muſt inflict the puniſhment of a robber Such is the expoſition approved by CULLUCABHATTA " Kinſmen' is an expreſſion merely illuſtrative which muſt be extended to others alſo.

" BUT, if he conſume it with her aſſent he ſhall pay the principal only, when he has wealth enough to reſtore it" (CCCCLXXV 6) there is conſequently no harm, if he do not repay the loan while he remains indigent. Accordingly a text, denying intereſt on the property of a woman, has been cited in the book on loans and payment (Book I, v LXXII) and this return of the principal only muſt be underſtood in a caſe different from the relief

relief of a diſtreſſed ſon, and in the inſtance of a gift on immoral conſiderations with *the* aſſent *of the woman*. By thus directing the reſtoration of ſuch wealth with intereſt *in certain caſes*, the ſuppoſition, that the huſband has a title in the ſole property of his wife, as ſhe has in the ſole property of her huſband, but that ſhe has a further independent power over that which is called her exclusive wealth, is thus contradicted by directing the reſtoration of her property with intereſt *in certain caſes;* for wealth, which alſo belonged to her own lord, could not become a loan *to him*.

" WHATEVER ſhe has put amicably into the hands of her huſband afflicted by diſeaſe, ſuffering diſtreſs or calamity &c." (CCCCLXXV 7 :) conſequently, as his wife, ſeeing his diſtreſs, *voluntarily* gave her own property, ſo ſhould her huſband alſo repay it, of his own accord, without a demand. Accordingly it is obſerved in the *Retnácara*, her huſband and the reſt ſhould voluntarily repay it. The ſenſe of the text is this ; her own property, which has been lent by a woman, ſeeing her huſband or kinſman afflicted by diſeaſe or the like, he ſhould voluntarily repay : ſo the *Chintameni*. Conſequently, ſay ſome lawyers, this diſeaſe is not ſuch an extreme illneſs as impedes the performance of duties, nor does the creditor obſtruct the performance of them ; the text does not therefore contradict YA'JNYAWALCYA. That is wrong ; for it contradicts the maxim, " a diſtinct import is inadmiſſible when coincidence is poſſible." Thus the ſenſe is ; he ſhall repay it by his own free will, not againſt his conſent : the ſame is declared by YAJNYAWALCYA, " he ſhall not be compelled to reſtore it againſt his will". This alſo is meant in the *Retnácara* and *Chintámeni*.

CCCCLXXXI.

CA'TYA'YANA :—YET more ; if he have taken a ſecond wife, and no longer give his firſt wife the honour due to her, the king ſhall compel him, even by violence, to reſtore her property, though it was put amicably into his hands.

2. IF ſuitable food, apparel, and habitation ceaſe to be provided for a wife, ſhe may by force take her own property, and a juſt allotment *for ſuch a proviſion*, or ſhe may, *if he die*, take it from his heir :

3. This

3 This is a law of LIC'HITA, but after receiving *her own property and just allotment*, she must reside with the family of her husband, yet, if afflicted by disease and in danger of her life, she may go to her *own* kindred.

If she have given her own wealth to relieve him in sickness or the like, or have amicably bestowed it in a season of calamity, and afterwards her husband, cohabiting with any other wife at pleasure, does not give her due honour in season or out of season, or if he do not give her food and apparel, in either case, she may by force take back her own property, though given when she saw her husband afflicted by disease or the like, and may take the allotment to which she is specially entitled Consequently she may also take from his heir, that is, from the brother or other near kinsman of the proprietor, the food, apparel, and the like, which *ought to be received by* her in that secular order

This must be affirmed to be an ordinance of the legislator LIC'HITA, or this is a law of the written *(lic hita)* code But, after receiving this property, she must live with the family of her husband, and not go elsewhere, inflamed with anger, *for she ought to reside with her husband's family only.* If sickness supervene, she ought to take remedies there only, but, if a violent distemper occur, by which the loss of life becomes probable, and her husband does not provide suitable remedies, she may go to the family of her kinsmen, that is, to her father's family The text is so expounded by VACHESPATI MISRA following CHA'NDE'SWARA.

If a husband, although wealth have been amicably given by his wife, do not show her due honour, the king shall compel him, by force, to restore her property, such is the sense of the first verse If he do not supply his wife with food and apparel, the king shall compel him to give her a just allotment for food, raiment, habitation, and the like, out of his own property Such is the sense of the second verse *This remark* of SRI CRĬSHNA TERCA'LANCARA, commenting on the treatise of JIMU'TAVA'HANA, is also accurate But others consider this text (CCCCLXXXI 2) as relating to widows consequently, if brothers in law and the rest do not give *suitable*

food

food and apparel to the widow of their brother, ſhe may claim her juſt allotment from her huſband's brethern. The aſſignment of a ſhare conſiſts of a proviſion for food and clothes; hence the appoſiteneſs of *certain* texts, which declare the *widow's* right of ſucceſſion to the eſtate of him who leaves no ſon, *and of other precepts*, which ordain partition, and which allot a mere maintenance, is obvious.

VYA'SA declares how much wealth ought to be given by a huſband to his wife.

CCCCLXXXII.

VYA'SA :—A PORTION, amounting to two in the thouſand, out of the whole eſtate, ſhould be given to a woman; that, and whatever wealth is beſtowed on her by her huſband, ſhe may uſe as ſhe pleaſes.

THE word "huſband" occurring in the laſt hemiſtich, the ſame term is preſented in anſwer to the queſtion ariſing on the firſt, "by whom ſhould that portion be given?"

JI'MU'TAVA'HANA.

HENCE, after the death of a brother, the ſurviving coheirs, having given two thouſand *panas*, *or two* panas in the thouſand *(for the term is explained in both ſenſes)*, *may divide the reſidue among themſelves: ſuch is the* meaning of the firſt hemiſtich Lawyers, who affirm, as the import of the laſt, that a woman has independent power over wealth given by an affectionate huſband, even though it be the whole of his property, are *thus* contradicted; for, were ſuch an import eſtabliſhed, it would be an unprecedented expoſition; for the word portion or heritage *(daya)*, taken in its derivative ſenſe, ſignifies only wealth in general. More may therefore be given by any other perſon. If more than two thouſand *panas*, or two in the thouſand, be given, does that allotment legally become the excluſive property of the woman? CHANDESWARA conſiders it as invalid: for he has cited the text of VYA'SA with this obſervation premiſed, "the legiſlator ſhows how much wealth may be given by her huſband, over which a

But the author of the *Pracáśa* says, more than two thousand *panas* must not be given to the wife of lepers and the rest, entitled to food and apparel only, and residing apart on food separately prepared.

In this case, since the maintenance is not regulated, the limitation of a sum would be irrelevant; it seems therefore, that this allotment is given by the brothers or other kinsmen of their husbands, *to be held by those women* as their exclusive property. But the allotment for such women residing with the family and partaking of the same food is not limited, for due honour should be shown to them as well as to the wives of other coheirs. Since these three opinions, being contradictory, cannot all be followed in practice, the opinion of the author of the *Pracáśa* should be adopted, because it is *the most* ancient: other opinions have been here inserted for the sake of elucidating this, and of thereby obviating the objection which modern authors have set up against it.

If the father die after promising to give, as exclusive property, such a sum as may be *legally* bestowed on his wife, Cá'tyá'yana ordains, *that it shall be delivered by his sons.*

CCCCLXXXIII.

Cá'tyá'yana:—What has been promised to a woman by her husband, as her exclusive property, must be delivered by his sons, provided she remain with the family of her husband; but not, if she live in the family of her father.

Consequently there is no harm in not delivering to a woman, who resides of her own authority with the family of her father, what has been promised to her as her exclusive property.

CCCCLXXXIV.

Cá'tyá'yana:—But a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of the property before described.

Kinsmen,

KINSMEN, reſuming the excluſive property of ſuch a woman, may take it to themſelves.

The *Vivádа Chintámeni.*

" ACTS injurious to her huſband ;" the adminiſtering of poiſon or the like. " Who has no ſenſe of ſhame ;" who goes to other towns on falſe pretences or the like. " Who deſtroys his effects ;" who incurs expenſes for immoral purpoſes.

WEALTH was conferred for the purpoſe of defraying ſacrifices; therefore diſtribute wealth among honeſt perſons, not among women, ignorant men, or ſuch as neglect their duties.

THIS text is cited by JI'MU'TAVA'HANA and the reſt, under the title of ſucceſſion to the eſtate of him, who leaves no male iſſue (CCCCXIII) : it is likewiſe inſerted by CHANDESWARA in this place. Conſequently " diſtribute" here poſitively intends donation and the taking of an inheritance. The diſtributer is the King or any other perſon. Or the denial of donation and of ſucceſſion to an inheritance *are meant ;* the one expreſſed, the other implied by parity of reaſoning. But let him not diſtribute it among women, ignorant men, or thoſe who neglect their duties ; ſuch is the conſtruction of the ſentence. *Conſequently peculiar property ſhould not be given* to a woman, ſolely by the will of the donor, but ſhould be conferred with due attention to her good qualities and the like, and in proportion to her wants.

SECTION

SECTION II.

ON SUCCESSION TO THE EXCLUSIVE PROPERTY OF A WOMAN.

ARTICLE I.

ON THE SUCCESSION OF HER ISSUE MALE AND FEMALE

SONS and daughters ſhall jointly ſucceed to ſuch property left by their mother, under the text of MENU (IV) He himſelf makes that evident

CCCCLXXXV

MENU —ON the death of the mother, let all the uterine brothers and the uterine ſiſters, *if unmarried*, equally divide the maternal eſtate *each married ſiſter ſhall have a fourth part of a brother's allotment.*

THE text of NAREDA (CCCCLXI) will be referred to wealth received on account of marriage It ſhould be underſtood that debts muſt of courſe be paid, for the ſucceſſion is ſimilar to the inheritance of the paternal eſtate, and a daughter is alſo conſidered as an heir

CCCCLXXXVI

YAJNYAWALCYA —LET the ſons, after the death of their parents, equally ſhare the aſſets and equally pay the debts of the deceaſed what remains of a mother's fortune, after payment of her debts, her daughters inherit, if there be no daughters, their iſſue.

THE words "ſons ſhall divide,' and "after death,' are repeated from

the

the firſt hemiſtich; conſequently, after the death of their mother, ſons and daughters ſhall divide her fortune: ſuch is the conſtruction of the phraſe. But, according to ancient authors, "after the death of their parents," muſt be repeated in the ſecond hemiſtich; for a ſon, not being his own maſter, while his father lives, cannot regularly divide that fortune. The ſame likewiſe is nearly deduced from the interpretation of JI'MU'TAVA'HANA and the reſt.

OR unmarried daughters only ſhall take an equal ſhare with a ſon, not a married daughter.

CCCCLXXXVII.

VRĬHASPATI:—THE property of a married woman goes to her ſons, but her daughter, if unmarried, has an equal ſhare of it; if ſhe be married, ſhe inherits not *in that caſe* the wealth of her mother.

THE term "offspring" here relates to her ſons.

CHANDE'SWARA, JI'MU'TAVA'HANA and the reſt.

CCCCLXXXVIII.

SANC'HA and LIC'HITA:—ALL uterine brothers and virgin ſiſters are entitled to equal ſhares of *the* wealth *left by their mother.*

CCCCLXXXIX.

DE'VALA:—A MARRIED woman being deceaſed, her property goes to her ſon and *unmarried* daughter, as parceners: if ſhe leave no iſſue, let her huſband take it, her mother, her brother, or her father.

CCCCXC.

GO'TAMA:—A WOMAN'S eſtate goes to her daughter not betrothed, *then* betrothed only, *or laſtly married.*

ON this text of GO'TAMA, and taking the literal ſenſe of the precepts of NA'REDA and YA'JNYAWALCYA, daughters ſucceed firſt to the ſeparate property of a woman; on failure of them, a ſon: but that is contradicted by MENU, VRĬHASPATI and DE'VALA; for they expreſsly declare the equal title of the ſon and daughter. Thus a ſon ſucceeds to the ſeparate eſtate of his deceaſed mother, but an unmarried daughter has an equal title with him; on failure of either of them, the other inherits *the whole*: in default of daughters not affianced, one, who is verbally betrothed, ſhall inherit; for ſhe is ſeparately mentioned by GO'TAMA.

CHANDE'SWARA.

MISRA, CHANDE'SWARA and CULLU'CABHATTA read the laſt meaſure in the text of VRĬHASPATI; "ſhe receives a trifle as a mark of reſpect." *(labhaté mána mátracam)*. Hence, from the concurrent import of the text of VRĬHASPATI, that of MENU likewiſe is thus expounded by CHANDE'SWARA; 'unmarried ſiſters only have equal ſhares with their brothers; but to married ſiſters ſome trifle muſt be given as a mark of reſpect, in proportion to the eſtate.' MISRA concurs in that opinion. But CULLU'CABHATTA ſays, out of the maternal eſtate, the fourth part of a ſhare ſhall be given to married ſiſters, as a quarter of a ſhare is allotted to unmarried ſiſters out of the paternal eſtate. JIMUTAVAHANA reads, "ſhe ſhall not inherit the wealth of her mother" *(na labhen matrĭcam dhanam)*, and adds, on failure either of a ſon or of an unmarried daughter, the other inherits the whole, in default of both, the claim of married daughters, who have or may have ſons, is equal.

WHAT proof is there, that a married daughter ſhall in this caſe inherit the ſeparate eſtate of her mother, for ſiſter, daughter, and other terms, in the texts of MENU and the reſt, relate to unmarried daughters only? Lawyers thus reconcile the ſeeming difficulty, the word iſſue occurring in the text of DE'VALA, and a married daughter being iſſue of her mother, both ſhe, who has, and ſhe, who may have, a ſon, are entitled to inherit. Then a barren or widowed daughter ſhould alſo ſucceed? They do not inherit, becauſe they cannot confer a benefit on their mother, but ſhe, who has, or may have, male iſſue, can confer a benefit by means of her ſon So JIMU'TAVA'HANA.

But

But ſome lawyers hold, that, on failure of unmarried daughters, a married one ſhall have an equal ſhare with a ſon, for no diſtinction in reſpect of daughters is mentioned in the textsof Menu, Na'reda, Ya'jnyawalcya and Vas'isut'ha: but the text of Vr̆ihaspati relates to the caſe where an unmarried daughter exiſts: and even on the text of Go'tama, as there is an order of ſucceſſion to the paternal eſtate, ſo there is in the preſent inſtance; but with this diſtinction, that a ſon and daughter jointly ſucceed. That opinion ſhould be rejected, being unnoticed by eſteemed authors.

Sri' Cr̆ishna Terca'lanca'ra and others hold, that unmarried daughters, whether verbally bêtrothed or not, ſhall at the ſame time take equal ſhares. Does it not appear from the ſeparate mention of them in the text of Go'tama, that their title is ſucceſſive? To this we reply, ſince it is acknowledged, that *the ſucceſſion of* a daughter, who has been betrothed, is barred by *the claim of one*, who has not been affianced, both cannot have an equal right to inherit with their brother: one, who has an equal title with the preferable heir, cannot be reduced to an equal ſucceſſion with one who would have been excluded *by that heir; for ſtonger* and weaker claims cannot, in the ſame circumſtances, be equal. But, as a ſon, who would be debarred by the exiſtence of his own father, has an equal claim to the patrimony, with his paternal uncle, who had an equal right with his father, ſo likewiſe, in the preſent inſtance, *a betrothed daughter, who would have been debarred by a daughter not betrothed, has an equal title with a ſon, who had an equal title with the daughter who was not betrothed.* As for the argument, that a ſon's ſon, whoſe own father is dead, confers benefits by the oblation of ſingle and double ſets of funeral cakes, but not while his own father is living; this conſequently, not the intervening right of his father, is the cauſe why he does not receive the heritage; that is futile, for the great grandſon, whoſe own father is dead, muſt neceſſarily be debarred by his paternal grandfather. Therefore, as it is not admitted, that

THE text of GO'TAMA relates to property received at the time of the nuptial ceremony. So

CCCCXCI.

MENU, and the *Mahábhárata*:—THAT, which was given to her mother at the time of her marriage, ſhall become the ſhare of the virgin daughter alone.

THE daughter not verbally betrothed, whom the legiſlator calls a virgin daughter, ſhall take the property which was given on the bridal proceſſion of her mother. To the queſtion, who ſucceeds in her default? the anſwer is, a daughter only betrothed, as ordained by GO'TAMA; but, on failure of her, the married daughter, who has, or may have, a ſon, as ſuggeſted by the text of VAS'ISHT'HA.

CCCCXCII.

VAS'ISHT'HA:—THE paraphernalia of the mother, her female iſſue ſhall inherit in equal ſhares.

ON failure of ſuch a married daughter, a ſon ſucceeds; in default of him, a barren or a widowed daughter, for they alſo are iſſue of the mother. Such is the opinion of JI'MU'TAVA'HANA.

THE opinion of CHANDE'SWARA ſhould be here followed. But as for the explanation of the word *apratiſh't'hitá* * propoſed by MISRA and CHANDE'SWARA, (one, whoſe huſband is indigent, and who is unfortunate,) it has been cenſured by JI'MU'TAVA'HANA and the reſt, becauſe there are no grounds direct nor argumentative for ſuch an expoſition. As for the word paraphernalia *(párinájya)* in the text of VAS'ISHT'HA, which is expounded by MISRA and CHANDE'SWARA, 'female apparel, mirrors, bracelets and the like,' that explanation might be admitted, if it did not contradict the rule for expounding phraſes of ſcripture and of law in a literal ſenſe. but it is improper to interpret the words of ſcripture and of law in a ſecondary ſenſe,

* Tranſlated "betrothed only."

or by conſtruction with remote terms, by repetition and the like; for otherwiſe, words becoming *ſimilar to* the milch cow which gratifies every wiſh, all words would be preſented in all ſenſes, and there would be no certainty of the meaning. The ſame remark ſhould alſo be extended to other *parts of the ſentence*, leſt the term "woman" *(interpreted female iſſue)* be taken in various ſenſes by an *implied* repetition, under the rule, *that the plural number* is an abridged form *of the ſingle term thrice or oftener repeated.* Conſequently, admitting no diſtinction of daughters unmarried or married, they *all* have an equal claim *to* the female apparel and the like. Thus ſome lawyers. But that is wrong; for in the gloſs on the text of YA'JNYAWALCYA, the ſame rule is applied to wealth given on her marriage, and to the paraphernalia *of a married woman.* Conſequently this term has been expounded as ſignifying female apparel and the like, on the conſideration that the word was ſo uſed by ancient authors.

'THE right of the daughter, in preference to the ſon, is founded on the mention of daughters in the text of YA'JNYAWALCYA (DI). It ſhould not be argued, that this word relates to unmarried daughters. To the queſtion who ſhall inherit on failure of them, there would be no certain anſwer.

LIKE other ſeparate property left by a married woman, a daughter inherits this alſo on failure of ſons. It ſhould not be argued, 'be the law as it 'may in other caſes, ſtill the ſon, as iſſue of the mother, has, in this in'ſtance, a right of inheritance on failure of a daughter, *not in preference to* 'her, for the term "her" or their, in the text of NA'REDA (CCCCLXI), in'tends the mother.' Even in that caſe the difficulty is removed by referring the word daughter to the unmarried one, upon the coincidence of the text of MENU; and the word "her *or their*" may intend the married daughter immediately preſented *by the order of the ſentence.* Connecting the word "daughter," which ſignifies female offſpring of the mother, with "iſſue" ſignifying progeny, the ſenſe exhibited is "iſſue of the daughter:" the ſuppoſed objection, that a perſon or thing cannot be *ſpoken of*, at the ſame time, *as* effect and *as* cauſe, is thus obviated. If the word "iſſue" implied ſon of the mother, the word "her" or "their," would be unmeaning; for, without that term, the word mother is already preſented in the phraſe, "daughters *ſhare the wealth* of their mother."

IT

It ſhould not be objected, that the ſucceſſion of the daughter in preference to the ſon is ſuggeſted by the text of YA'JNYAWALCYA (CCCCLXXXVI); becauſe, the word "her" or "their" not being found in that text, the meaning muſt be 'iſſue of the mother.' Since there is no argument to prove the reſtriction of that text to wealth received at the time of marriage, it has been already expounded as relating to the eſtate of a married woman in general; and the word "iſſue" always requiring the reference to a parent, it ſhould be joined in conſtruction with the neareſt term "daughter." It ſhould not be objected, that, in anſwer to the queſtion ariſing on this interpretation of the phraſe "if there be no female offspring, then male iſſue," the mother is moſt naturally preſented, being already placed in conſtruction as the parent. Leſt another text (DI) become a vain repetition, this precept muſt be explained as relating to other property of a woman, except that which ſhe received at her marriage; it is therefore improper to affirm, that the ſon ſucceeds on failure of daughters, and the interpretation therefore is not ſimple. Conſequently the terms ought only to be underſtood in this ſenſe, "iſſue produced by them."

AGAIN; this text does not relate to wealth received at the time of marriage, it is therefore confirmed, that no proof exiſts of the right of a married daughter to inherit, in preference to a ſon, wealth received *by her mother* at the time of marriage. To this it is anſwered, the joint right of all daughters being deduced from the text of YA'JNYAWALCYA, becauſe that attributes a right to daughters as ſuch, the order of ſucceſſion, propounded by MENU and GO'TAMA, is not ordained by YA'JNYAWALCYA; *but* the "word daughter" intends ſecondarily an unmarried one. Hence, all daughters firſt inherit ſucceſſively; on failure of them, the ſon has a demonſtrated title.

THE general right of daughters and ſons to take equal ſhares being deduced from the text of MENU and from that of YA'JNYAWALCYA above cited, the order of ſucceſſion is only ſuggeſted by the text of VRI'HASPATI: does it not follow therefore, that a ſon and a married daughter have an equal title to the eſtate of a woman, other than wealth received at her *marriage*? It ſhould not be objected, that the equal participation of one who was debarred,

with

with one by whom he was debarred, is contrary to common ſenſe. It has been already ſtated, that this muſt be admitted in the caſe of wealth inherited from anceſtors: in the inſtance of a title deduced from reaſoning, argument, which juſtifies the equal claim of one, by whom another is debarred, cannot indeed juſtify the equal claim of one who was debarred by him; but in a caſe expreſſly ordained by law, it is otherwiſe. Thus, ſince reaſoning is not in this caſe adduced to prove the equal title of the ſon and of the daughter, their equal claims muſt be affirmed to be ſolely deduced from expreſs law: and, if the equal title of one who was debarred, and of one by whom he was debarred, have been propounded in expreſs texts of law, then only can it be admitted.

To the queſtion thus propoſed, the anſwer is, no; for the excluſion of the married daughter, if there be a ſon and an unmarried daughter, is ſuggeſted in a portion of a text above cited (CCCCLXXXVII as read by CHANDE'SWARA), and it has been already eſtabliſhed by inveſtigation, that a married daughter inherits only on failure of both, ſince there is no ground for ſelection.

CCCCXCIII.

CA'TYA'YANA:—ON failure of daughters, that eſtate *of a married woman* ſhall deſcend to her ſon; but, in default of her parents and brothers, what ſhe received from her kinſmen, devolves on her huſband;

2. Married ſiſters ſhall ſhare with kinſmen: this law, concerning the ſeparate property of a woman, is ordained in the caſe of partition.

CCCCXCIV.

VISHNU after premiſing "forms of marriage:"—IN all forms of the *nuptial* ceremony, the eſtate of women, who leave iſſue, deſcends to their daughters.

CCCCXCV.

MENU:—IF a widow, *whoſe huſband had other wives of different claſſes*, ſhall have received wealth at any time *as a giſt* from her father, *and ſhall die without iſſue*, it ſhall go to the daughter of the *Bráhmaní* wife, or to the iſſue of that daughter.

JI'MU'TAVA'HANA infers from the ſpecial mention of "wealth received from her father," that property given by her father, at any other time but that of the nuptial ceremony, ſhall go to the daughter: the word *Bráhmaní* is a *mere* repetition. Conſequently, ſince the term *Bráhmaní* merely ſuggeſts lawful *marriage*, wealth, given by their fathers to women of any claſs, ſhall deſcend to their daughters, not to their ſons while a daughter is living. Diſapproving the *vain* repetition ſuppoſed in this interpretation, he ſubjoins another explanation; 'or, leſt the word *Bráhmaní* ſhould become a *vain* repetition, the text may be explained as ſignifying, that the daughter of the *Bráhmaní* wife ſhall take the wealth which the *Cſhatriyá* or other wives, leaving no iſſue, had received from their fathers: the ſeparate property of a woman, who leaves no iſſue, does not devolve on her huſband. Thus, the whole text is well interpreted.' CHANDE'SWARA and CULLU'CABHATTA adopt this explanation. It ſhould not be argued, that the text does not ordain the right of a daughter by another wife, but limits ſucceſſion in favour of one born of a *Bráhmaní* woman in lawful wedlock. The words "received from her father" would be unmeaning; and many phraſes muſt be taken in a ſecondary ſenſe, if texts, expreſſed in general terms, muſt be referred to a limited import, in conſequence of a diſtinction taken in regard to daughters. As for the notion, that the text is intended to ſhow the ſucceſſion of the *Bráhmaní* daughter to wealth given by a father or other kinſman on any other occaſion but the nuptial ceremony: that alſo is not approved by authors; for there would be a diſparity in the repetition of laws concerning

oblations. Why does not the ſon's ſon inherit in preference to the daughter? It ſhould not be anſwered, he does not inherit, becauſe there is no argument to eſtabliſh the ſucceſſion of a grandſon diſtant by an interval, ſince the text of NA'REDA declares the right of the daughter immediately after that of the ſon (CCCCXIX). Since that text is inſerted by JI'MU'TAVA'HANA under the title of ſucceſſion to the eſtate of him who leaves no male iſſue, the word ſon muſt neceſſarily ſignify male iſſue by males as far as the great grandſon.

To the laſt queſtion propoſed, the anſwer is, the ſucceſſion of a daughter to the ſeparate property of her mother is expreſſly ordained by law, not deduced from reaſoning. Were it inferred from argument, ſhe would have no right, if a ſon exiſted. Hence it is improper to conteſt her right which is ſuggeſted generally by her relation as daughter: it could only be reſiſted by the authority of a ſpecial text, if ſuch there were. But other lawyers hold, that a daughter is heireſs in the firſt place, ſolely becauſe ſhe ſprang from the body *of the mother*; elſe, the right of the daughter would be ſubſequent even to that of a daughter's ſon. Neither has the daughter's ſon an equal claim with the ſon's ſon, nor yet a prior claim; for the ſon of a married daughter, who is *herſelf* debarred *by a ſon*, is excluded by the ſon of a ſon, by whom the daughter was debarred. But SRI' CRISHNA TERCA'LANCA'RA, adopting this reaſoning, affirms the prior title of a daughter's ſon to inherit wealth given at the nuptial ceremony. This therefore is the deciſion; on failure of ſons, a daughter's ſon is, in the firſt place, heir to wealth given at the nuptials; in default of him, the ſon's ſon: but to property, which was not given at the marriage, the ſon's ſon is heir on failure of married daughters; and, in default of him, the daughter's ſon.

SOME lawyers aſk, admitting the ſucceſſion of a daughter under the authority of the text, although ſhe confer no benefit *on her parents*, how can a daughter's ſon inherit?

CCCCXCVI.

SA'TA'TAPA:—AFTER the firſt annual obſequies by the *ſapindas*,

das, whatever is given *at the monthly rites* to anceſtors *by the ſon of the deceaſed*, his mother has a ſhare of the benefit: this is a ſettled rule in all ſyſtems of religious and civil duties.

If it be argued from this text of law cited by RA'GHUNANDANA, that a daughter's ſon alſo confers benefits on his maternal grandmother, becauſe ſhe has a ſhare of the funeral cake offered to his maternal grandfather, ſince the word "anceſtors" (literally fathers) intends three paternal, and three maternal forefathers, namely the father and the reſt, and the maternal grandfather and ſo forth; and the word "mother" intends three female anceſtors aſcending from the mother, and three other female anceſtors aſcending from the maternal grandmother; *theſe lawyers reply*, the word "anceſtors" intending three perſons aſcending from the father, there are grounds for taking the word "mother" in the large ſenſe of mother, paternal grandmother, and paternal great grandmother, namely the coincidence of the text formerly cited (CCCCXXXII) and of the following precept.

CCCCXCVII.

At obſequies on the day following the eighth lunar day in certain months,* at thoſe with a triple ſet of oblations, at *Gayá*, and at the anniverſary obſequies, the ſon ſhould ſeparately perform a *śrádd'ha* to his mother; in other *caſes he ſhould perform obſequies to her with her lord.*

For it is there ſhown, that in other inſtances the *śrádddha* ſhould be performed to thoſe women with their lords, for whom it is ſeparately performed, by the followers of the *Yajurvéda*, at the obſequies mentioned. But if this be taken as an indirect authority for conſidering the word "mother" as bearing the ſecondary ſenſe of maternal grandmother, then ſhe is in truth benefited by her daughter's ſon: yet SRI' CRISHNA TERCA'LANCA'RA objects *to this*, the remark of A'CHA'RYA CHU'D'A'MANI', that the ſon of an uterine ſiſter, and the ſon of a ſiſter by a different mother,

* *Aswaťuka*; on the ninth lunar days of *Paušha*, *Mágha*, and *P'halguna*; and with ſome, in *Aſwina* alſo. T.

have

have an equal title to the eſtate of him who leaves no male iſſue *nor rear b ir.* They could not, ſay ſome lawyers, have an equal right of ſucceſſion, if the maternal grandmother could be benefited by her daughter's ſon. That is futile, for the ſucceſſion of the daughter's ſon is deduced from a text of VRIHASPATI which will be cited, and he has, as iſſue of his grandmother, a legal right of ſucceſſion, under the text of MENU (XLII), before her huſband there mentioned, but after her ſon's ſon, and the texts of NA'REDA and YA'JNYAWALCYA (CCCCLXI and CCCCLXXXVI) *ſuggeſt his ſucceſſion.*

ADMITTING the ſucceſſion of a daughter's ſon, but after the great grandſon in the male line, ſhould he not alſo ſucceed to wealth given at the nuptials, after both the grandſon and the great grandſon in the male line, *not before either of them?* No, the right of the daughter's ſon being ordained by texts of law, the further order of ſucceſſion is eſtabliſhed by reaſoning: and that reaſoning is here founded on proximity, and on the ſimilar mutual excluſion of the remoter offſpring of thoſe, who debar, and are debarred by, each other Then the ſon's ſon is not heir, becauſe he is not mentioned in the text, and ſurely the ſon of that grandſon *has no claim?* The right of the daughter's ſon being barred, this ſuggeſts the right of the ſon's ſon to wealth, other than that which had been given at the nuptials, but a ſon's ſon, and the ſon of that grandſon ſhall ſucceed before the huſband to wealth given at the marriage, becauſe they are iſſue of the woman. If the great grandſon in the male line inherit in right only of his being iſſue of the woman, may not his ſon or remoter deſcendant alſo inherit? Both lineal deſcent and benefits conferred are cauſes of inheriting the ſeparate property of a woman, for the word "him" is not limited to the maſculine gender, in the text of MENU, "even the ſon of a daughter delivers him in the next world, like the ſon of his ſon," and that text muſt be conſidered as relating to the ſon of an appointed daughter, but not reſtrictively, that the verſe of the *Mahabharat* (CV) may coincide with it Since the rights of a ſon's ſon are attributed to a daughter's ſon, the ſon of a daughter inherits after the ſon of a ſon, but he is firſt heir to the wealth given at nuptials, becauſe, ſay lawyers, his mother is in this inſtance chiefly conſidered

THE daughter of a daughter is not heireſs with the ſon of a daughter, nor after him, nor before him; for no law ordains her ſucceſſion. As for the ſubjoined text of MENU, it ſhows that ſome trifle ſhall be given as a mark of reſpect by the ſon and by the daughter, not that a ſhare ſhall be received by the daughter of a daughter; for the text expreſſes "ſomething," *that is, ſome trifle;* and the expreſſion, "ſhould be given," ſuggeſts the brother and ſiſter as the givers, which would be improper if ſhe had an equal right of inheritance with them.

CCCCXCVIII.

MENU:—EVEN to the daughters of thoſe daughters, it is fit, that ſomething ſhould be given, from the aſſets of their maternal grandmother, *in proportion to the allotments,* on the ſcore of natural affection.

"IN proportion to the allotments;" in proportion to the great or ſmall amount of the aſſets. The *Retnácara.*

BUT VA'CHESPA'TI BHATTACHA'RYA ſays, ſomething muſt be given to the daughter's daughter, whoſe own mother is dead; and that muſt be given by a married daughter, not by a ſon, nor by an unmarried daughter; but, if the wealth were received at the nuptials, *ſomething muſt be allowed* even by a ſon: and that ſomething, which is given, ſhall be proportionate to the ſhare of her mother, as the ſon's ſon, whoſe own father is dead, receives a ſhare of the property left by his paternal grandfather. It is proper therefore to refer the word "thoſe" to the perſons who make the partition.

THE comprehenſion of the married daughter in the text preceding this (CCCCLXXXV) is *not univerſally admitted; for the unmarried daughter* may be intended by the word "ſiſter." The ſucceſſion to the ſeparate property of a woman does not, like the inheritance of an eſtate left by a man, extend to the third in deſcent: this objection to that commentary ſhould alſo be examined.

VA'CHESPATI MISRA likewiſe affirms, that, on failure of daughters, *the ſon*

and

and the daughter of a daughter inherit under the text of MENU. To this again it may be objected, ſay *ſome* lawyers, that, according to MISRA and CHANDE'SWARA, the ſon of a daughter ſucceeds, on failure of daughters, to the wealth given at nuptials, although a ſon exiſt, under the texts of NA'REDA and YA'JNYAWALCYA above cited.' That is queſtionable; for the full import of the text of YA'JNYAWALCYA relates to other ſorts of property, except wealth given at nuptials, ſince another precept of YA'JNYAWALCYA (CCCCLXXXVI) would be a vain repetition, if this text related to wealth given at nuptials: the precept of NA'REDA alſo may bear the ſame import; for the word "ſons," in his text (CCCCLXI), may be brought *from the firſt hemiſtich into the laſt;* in both inſtances, it is more proper to carry forward the word ſons *into the ſecond hemiſtich*, than to attribute the limited ſenſe of wealth received at nuptials to the words "eſtate" and "aſſets," which denote property in general, and which are already carried forward *into the laſt hemiſtich of each text;* and the ſon of a daughter is inferiour in compariſon with the woman's own ſon.

JI'MU'TAVA'HANA, RAGHUNANDANA and the reſt affirm the right of the ſon to inherit wealth given at nuptials, in preference to the daughter's ſon. On failure of both grandſons, RAGHUNANDANA holds, that the great grandſon *in the male line ſhall inherit.* JI'MU'TAVA'HANA admits the right of a great grandſon in the male line. But that reading in the treatiſe of RAGHUNANDANA, authors conſider as an errour of the tranſcriber. This is not elegant; for it is wrong to ſuppoſe, that JI'MU'TAVAHANA, who aſſerts the ſucceſſion of a daughter in right of the funeral cake offered by her ſon at the double ſet of oblations, ſhould not admit the ſucceſſion of a grandſon in the male line, who does himſelf offer the funeral cake. Accordingly SRI' CRISHNA TERCA'LANCA'RA, author of a commentary on his treatiſe, ſays, 'on failure of heirs as far as the daughter's ſon, ſucceſſion, extended to the great grandſon *in the male line, is* ſuggeſted indirectly.' The right of a great grandſon by males, on failure of grandſons in either line, is therefore demonſtrated. In default of him, barren or widowed daughters ſucceed; for they alſo are iſſue *of the woman.* So RAGHUNANDANA and JI'MU'TAVA'HANA.

BUT

But others hold, that these *female heirs* succeed merely as daughters; they were before debarred by persons, who confer benefits on *the female ancestors*, but have now gained the opportunity *of asserting their claim*. Is not this inaccurate, since the son of a daughter confers no benefit *on his maternal grandmother*? If it be said, benefiting her husband and the rest, he mediately confers benefits *on her*; it is answered, a married daughter would in that case succeed in preference to the son's son. To the question thus proposed, the answer is, since a married daughter may confer benefits on the husband of her mother, by means of her son, she, who thus affords some advantage, being at the same time "daughter" and "issue of the body" *of her mother*, cannot be debarred by those, who confer greater benefits; for the advantages afforded are not principally considered in treating of separate property held by women. But barren and widowed daughters, conferring not the least benefit, ought to inherit after the great grandson in the male line, but before the husband, because they are daughters and sprang from the body of their mother. Then should not these two inherit before the grandsons of a son whether in the male or female line *of descent from him? It may be answered*, what should prevent their succession to this property any more than to the estate of one who leaves no male issue?

But others again affirm, since there is no proof, that the funeral cake offered at the double set of oblations shall be chiefly considered in the succession to separate property held by women, therefore the barren and widowed daughters, who offer the anniversary cake, *may inherit before a daughter's son*

Why do not a son, a son's son, and the son of a grandson jointly inherit the estate of a married woman, as they do the property left by a man? It should not be answered, they inherit jointly on the sole authority of a text of Catyáyana, which relates to the subject of succession to the property of a man (LXXIX), but it is *not so in the present instance*, because there is no such text. Although that might be alleged on the opinion of Chandeswara and others, it cannot be affirmed conformably with that of Jimutaváhana and the rest, *for* texts, relative to the inheritance of property left by men (CCCCXCVIII &c), may be adduced under the title of succession

to

to the ſeparate property of women. It ſhould not be ſaid, that is admiſſible; the ſon's ſon, whoſe own father is dead, may claim the eſtate of his paternal grandmother, as *he may* the property of his paternal grandfather; and thus, the remark of JI'MU'TAVA'HANA, "a ſon's ſon inherits on failure of daughters," is intended to exclude a ſon's ſon, whoſe own father is living. In ſaying "a ſon's ſon ſhall inherit on failure of daughters," what is the import of that term? If one, whoſe father is living, be meant, terms denoting the failure of daughters are ſuperfluous; for a married daughter has no preſent claim, ſince the father of that grandſon has the ſole right of inheritance: if one, whoſe father is dead, be meant, why is the failure of daughters required, ſince he ſhares equally with an unmarried daughter? Thus neither would be appoſite.

To this ſome reply, JI'MU'TAVA'HANA does not deduce the rule of ſucceſſion to the eſtate of a woman, from a text relative to the inheritance of property left by a man; but on ſome occaſions he cites a text concerning this ſubject, in a form of illuſtration, to confirm *the rule otherwiſe deduced:* thus, the ſame reaſoning not being equally applicable to the property of a man and to that of a woman, it is improper to deduce rules concerning the eſtate of a woman, from texts relative to property left by a man.

WEALTH given at the time of marriage *(yautuca)* has been mentioned; what is meant by that term? Know, that it ſignifies any thing received at the time of marriage. From the verb *yu* mix, is derived *yuta*, by adding the neuter ſuffix of abſtraction; it therefore preſents the ſenſe of mixture: now, under the authority of the *Véda*, an union of bride and bridegroom takes place at the time of marriage; what is then received is called *yautaca*; reading the word, as JI'MU'TAVA'HANA does, without the *u*: but a various reading with the letter *u* occurs in ſome inſtances; and that is regularly derived from *yutu*, which again is regularly deduced from the crude verb *yu*, by ſubjoining the ſuffix *tu*.

THE forms of the nuptial ceremony are eight, diſtinguiſhing the marriages called *Bráhma*, *Daiva*, *Árſa*, *Práját́patya*, *Á'ſura*, *Gándharva*, *Rácſhaſa*, and *Paiſacha*: theſe are deſcribed by YA'JNYAWALCYA.

CCCCXCIX.

YA'JNYAWALCYA:—IN the *Bráhma* nuptials the damſel is given *by her father*, when he has decked her as elegantly as he can, to the bridegroom, whom he has invited; in the *Daiva*, to the prieſt employed in performing the ſacrifice; in the *Árſha*, to the bridegroom, from whom he receives, *for religious purpoſes*, a bull and a cow;

2. When the father gives her to a ſuitor, ſaying, "perform all duties together," the marriage is named *Cáya* (or *Práját́patya*); and a ſon produced by it conſers purity on himſelf and on ſix deſcendants in a male line: *

3. An *Áſura* marriage is contracted by receiving property from the bridegroom; a *Gándharva*, by reciprocal amorous agreement; a *Rácſhaſa*, by ſeizure in war; a *Paiſácha*, by deceiving the damſel.

4. THE four firſt *are approved in the caſe* of a prieſt; the *Gándharva* and *Rácſhaſa* marriages *are* permitted for a ſoldier; the *Áſura* ceremony *is peculiar* to mercantile and ſervile men; the *Paiſácha* marriage is reprobated for all.

THEY are called *Bráhma* and ſo forth to intimate praiſe or blame. 'This *firſt* ceremony is proper for *Bráhmanas* and the reſt, and therefore called *Bráhma*;' ſuch is the meaning ſuggeſted by the legiſlator.

WHEN a damſel, decked with ornaments, is given *by her father* to the bridegroom, whom he has invited to his own houſe, it is a *Bráhma* marriage, or *ceremony of* Bráhmanas, the firſt form of the nuptial rites; that marriage, in which the damſel is given to the family prieſt attending a ſacrifice, at the time when the ſacrificial fee ſhould be given, is termed *Daiva* or *the ceremony of* Dévas, the ſecond form; the gift of a damſel after having received from the bridegroom one pair of kine, *or* with *the delivery of* one pair of ſuch cattle,

* I complete the citation, which is imperfect in the original T

is

si named *Arſhà, or the ceremony of* Riſhis, the third form; when a damſel is given to any perſon aſking her in marriage, with theſe words *pronounced by the giver*, "Perform all duties together with her," it is denominated *Prájápatya* or *the ceremony of* Prajápatis; another name for it is *Cáya* derived from *Ca* which ſignifies *Prájapati*, according to dictionaries; this is the fourth form: the gift of a daughter to a bridegroom, taking from him wealth other than a pair of kine, *merely* at his own choice, without any authority of law, is named *`Aſura*, or *ceremony of* Aſuras, the fifth form; when there is reciprocal connexion with mutual deſire, the marriage is called *Gándharva*, or *ceremony of* Gandharvas, the ſixth form; the ſeizure of a maiden after overcoming her father in battle, or the abduction of her by force *from her houſe*, is denominated *Rácſhaſa* or *ceremony of* Racſhaſas, the ſeventh form; the ſeizure of a damſel by fraud, while ſleeping or intoxicated, is termed *Paiſácha* or *ceremony of* Piſáchas, the eighth form of nuptial rites. Of theſe modes, four, the *Bráhma*, *Daiva*, *`Arſha* and *Prájápatya* are *legal* for a *Bráhmana*; the marriage ſtiled *Gándharva*, and the ſeizure of a maiden in war, are peculiar to the *Cſhatriya*; the *`Aſura* marriage is permitted for a *Vaiſya* and a *`Súdra*; the *Paiſácha*, forbidden to them, ſhould be practiſed by no perſon whomſoever. Such is the expoſition approved by `Su'lapa'ni.

At preſent the *Bráhma* nuptials only are practiſed by good men; but even the marriages called *`Aſura*, *Gándharva*, *Rácſhaſa* and the reſt, are ſometimes practiſed by others.

"Marriage" is a rite to be performed by the bridegroom, and which completes the regenerating ceremonies, ſince the act of receiving *the bride* effects it, the term has been alſo uſed *in this gloſs* as ſignifying the gift *of a maiden*. The nuptial rites are neceſſary even in the marriage named *Gándharva* and the reſt.

D.

Devala.—Nuptial rites are ordained in the marriage ſtiled *Gándharva* and the reſt; to this contract the nuptial-fire muſt be made witneſs by men of the three claſſes.

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The ſecond marriage of a woman who had been already eſpouſed by another man, is called by ATHARVAN a regenerating ceremony. this marriage alſo falls under the deſcription of *Gardharca* rites

WEALTH, received at the time of marriage in any one of ſuch eight forms, is denominated *Yautuca* On this MISRA remarks, that wealth, received at the time of marriage in the form called *Brahma* and the reſt, goes to the daughters.

ARTICLE II.

ON SUCCESSION TO THE SEPARATE PROPERTY OF A WOMAN LEAVING NO ISSUE.

DI.

YA'JNYAWALCYA:—A MARRIED woman dying without iſſue, her property, received at *Bráhma* nuptials, or even in other four unblamable forms of marriage, it goes to her huſband; if ſhe leave iſſue, it deſcends to her daughters; but in other forms of the nuptial ceremony, her property then received goes to her father *and mother*.

HERE "four," *taken inclusively*, is not intended to except a fifth; hence, in the marriages called *Bráhma*, *Daiva*, *Arsha*, *Gándharva* and *Práájápatya*, the wealth of a married woman, who leaves no issue, goes, on her death, to her husband; in other forms of marriage, namely the *Rácshasa*, *Ásura*, and *Paisácha* nuptials, it goes to her father. This relates to wealth received by a woman at the time of her marriage.

The *Retnácara*.

"IT is not intended to except a fifth;" consequently wealth, received at four of the nuptial ceremonies, necessarily goes to the husband: but, in the form of marriage which is different from those four, it devolves, in some instances, on the husband; in others, on another heir. In like manner, under the precept, "received at other marriages, it goes to their parents," the wealth of married women, received at certain other marriages, devolves on their parents, but not what has been obtained at nuptials different from those others; which implies an exception of other persons in those other forms of marriage.

IN the marriage called *Racshasa* and the rest, if the father, or other kinsman of the maiden, though at that time defeated in battle (for such is the described form of this marriage), yet following the practice of the *Daiva* ceremony, or of marriage in general, give a nuptial portion to his daughter, through natural affection or from other motives, then this rule is applicable to that case.

and in the text immediately preceding (DII), the ſame conſtruction ſhould be followed by fetching the word "given" from the ſubſequent verſe. Such is the opinion of JI'MU'TAVA'HANA and the reſt.

DV.

YAMA:—WEATH, which is given on the marriage called *Aſura*, or on either of the *two* others, *goes to the parents of the woman.*

RAGHUNANDANA ſpecifies the time of marriage; 'the period of the nuptials is the ſpace from the beginning to the cloſe of the nuptial ceremony; it commences with the oblation for increaſe *of proſperity*, and ends with a return of the ſalutation:' it is ſo expreſſed in the *Vivá'la tatwa*. Here the implied meaning is, from the firſt to the laſt member of the ceremony: hence, if the oblation for increaſe *of proſperity*, or any other part of the rites be not performed, there is no objection.

BUT others ſay, "marriage," in the text above cited (DV), is expreſſed in the ſeventh caſe with a general or illuſtrative meaning; as in the phraſe, "he goes a begging." Conſequently, whatever is given to a damſel on account of her nuptials, is wealth given on her marriage *(yautaca)*; ſuch is the obvious ſenſe; and that alone ſhould be received by her huſband at a ſubſequent time. Accordingly wealth given on the day of marriage, before the oblation for increaſe of proſperity, is a preſent given on her nuptials. Does it not follow, that wealth, which a kinſman, returning from a diſtant country, but unable to attend on the day of the ceremony, gives when four or even five days are elapſed ſince the nuptials, would be a preſent given on her marriage; but wealth previouſly demanded, being delivered, on the very day of marriage, by a kinſman caſually uninformed of it, after the oblation for increaſe of proſperity, would not be wealth given on her marriage; and her huſband would have no right to it *after her demiſe? This is* admiſſible; for the expreſſion of CHANDE'SWARA, "received at the time of marriage," may be taken in a lax ſenſe as ſignifying a preſent given, by reaſon of her nuptials, on any other day whatſoever.

If a woman, having no iſſue *male or female* including daughter's ſons, leave a huſband who has a ſon by another wife, which of them ſhall inherit her eſtate? RAGHUNANDANA replies the ſon by another wife is firſt heir, on failure of him, the ſon of ſuch a ſon, in default of him again, the huſband and the reſt The reaſon is, that her huſband and others do not offer a funeral cake, in which the late proprietreſs can participate that is alſo noticed by the commentator, 'the ſon of another wife, and the ſon of ſuch a ſon, have both an equal claim, becauſe *others do* not offer, in the double ſet of oblations, a funeral cake which the proprietreſs may ſhare'

THE ſuperiour claim of the huſband and the reſt in competition with his ſon by another wife, is thus denied, becauſe they do not offer, in the double ſet of oblations, a funeral cake, which the proprietreſs may ſhare, it is not thereby ſhown, that the ſon of another wife has a ſuperiour claim and thus other reaſoning muſt be brought for the ſucceſſion of a ſon by another wife in preference to the ſurviving huſband ſuch, for example, as the following, ſince the ſon of any one wife is figuratively called, in a text of MENU, ſon of all the wives *of the ſame huſband*, his ſon ſhould alſo be figuratively termed grandſon of all the wives

DVI

MENU —*Thus* if, among all the wives of the ſame huſband, one bring forth a male child, MENU has declared them all, by means of that ſon, to be mothers of male iſſue.

IT ſhould not be objected, that, were it ſo, a brother's ſon would alone inherit the property left by a man, although a daughter or her iſſue, and brothers and the reſt, were living, becauſe a nephew is figuratively called ſon *of all the brethren* in a text of MENU (CCLXXVI) It would be irregular to deduce the order of ſucceſſion from reaſoning, whilſt *another* order of ſucceſſion expreſſly ordained by law, is found in the text of YAJNYAWALCYA (CCCXCVIII), but, in this caſe, no other ſeries of claims having been expreſſly ordained to bar that, which is deduced from reaſoning this order of ſucceſſion, conſiſtent with the reaſon of the law, ſhould be affirmed.

DVII.

BAUDHA'YAṆA.*—OF an unmarried woman deceaſed, the brothers of the whole blood ſhall take the inheritance; on failure of them, it ſhall go to the mother; or, if ſhe be not living, to the father.

'THAT again, which has been received by a woman after marriage, from 'the family of her father, mother, or huſband, ſhall go to her brothers, 'as ordained by the following text.

DVIII.

YA'JNYAWALCYA —IF a married woman die without iſſue, her neareſt paternal or maternal kinſmen inherit whatever her own family had given her, the perquiſites allowed by her huſband, and whatever ſhe received after marriage.

"WHATEVER her own family had given her," what was beſtowed on her 'by her father and mother their ſons, *meaning* her brothers, are the neareſt '*kinſmen*, paternal or maternal, *who ſhall inherit* as ordained by CA'TYA'-'YANA.'

JIMU'TAVA'HANA.

DIX

Vriddha CA'TYAYANA: — WHATEVER immoveable, *and of courſe whatever moveable*, nuptial property has been given by parents to their daughter, ſhall always go to her brother, if ſhe die without iſſue.

"WHATEVER ſhe received after marriage" from the family of her father, mother, or huſband, is called a gift ſubſequent. In like manner, the expreſſion "whatever her own family had given her, 'may ſuggeſt any thing beſtowed on her by her parents before marriage, however, it does not comprehend that, which her brother gave her, or which ſhe herſelf acquired, before marriage an heir being therefore ſought for ſuch property, her brother ſhould be con-

* The text is, in other compilations, attributed to NA'RADA.

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ſidered as having the ſole right. Since it is mentioned in the ſame place, JI'MU'TAVA'HANA and the reſt muſt of courſe admit the right of her brother, on failure of her huſband, to inherit wealth acquired by a woman during coverture. Brothers alone ſhall take the perquiſites, both thoſe which are defined by VYA'SA, and thoſe which are explained by CA'TYA'YANA. So JI'MU'TAVA'HANA and RAGHUNANDANA; SU'LAPA'NI alſo holds the ſame opinion. But CHANDI'SWARA ſays, the perquiſite, which was received when the damſel was given in marriage, is here determinately meant. He therefore conſiders the text of SANC'HA as relating to the caſe where the maiden dies immediately after receiving the nuptial preſent.

DX.

SANC'HA, after premiſing "may take back:"—The lover *may take back* his nuptial preſent on the death of his betrothed miſtreſs.

JI'MU'TAVA'HANA does not concur in that opinion; for ſuch a perquiſite or nuptial preſent, being taken by her father, does not become the property of the woman. If it be ſaid, this text relates to that wealth only, which is given excluſively to the maiden as a nuptial preſent on the bridal proceſſion; the anſwer is, there is no authority for ſuch an induction; and it would be difficult to find an heir for the perquiſites mentioned by VYA'SA and by CA'TYA'YANA. Again; it is ſuggeſted by the expreſſion, "what was received when the damſel was given in marriage," that he, who gives away the damſel, takes that preſent.

DXI.

GO'TAMA:—FIRST the whole brothers take the perquiſite of their ſiſter; after them (ſome ſay, before them), the mother.*

THIS laſt is the opinion of other legiſlators: thus HELA'YUDHA. The

* This text is attributed to CA'TYA'YANA by the compilers of the *Vivadarnava ſetu*, and the word father is interpolated by them: with that difference only, they interpret the text as I do, in conformity with the gloſs of JI'MU'TAVA'HANA. T.

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meaning is, after the mother, that is, after her death. If the mother and father be living, it goes to thoſe two. So the *Dípacalicá*.

SOME lawyers thus interpret the text; the whole brothers take the heritage of their ſiſter on failure of the mother and father (ſo ne legiſlators ſay, before them): that relates to other property except perquiſites, and this term bears a general ſenſe: the heritage of a maiden goes to her parents on failure of whole brothers; the eſtate of a married woman goes to her whole brother on failure of her parents; for the ſake of this double caſe, it is added "ſome *legiſlators* ſay."

BUT JI'MU'TAVA'HANA explains the text, after whole brothers, it goes to the mother; for that coincides with the text of BAUDHA'YANA (DVII): "ſome ſay, before them;" that is an opinion of other *legiſlators*.

CONSEQUENTLY *the ſeveral property of a ſiſter, received at any other time* but her marriage, goes to her brother; ſuch is his opinion. But, according to this interpretation, "unmarried women," in the text of BAUDHA'YANA, is unmeaning; and the other opinion, cited by GO'TAMA, is moſt inadmiſſible and improper. In a gloſs on the text of BAUDHA'YANA, the word damſel is ſuppoſed, in the *Retnácara*, to ſignify unmarried woman. But VIJNYA'NE'SWARA, in his gloſs on the text of YA'JNYAWALCYA, expounds "kinſmen," her huſband and the reſt; a diſtinction, *he adds*, will be noticed from other texts: conſequently her eſtate goes to her kinſmen on failure of iſſue; and in that caſe, wealth received at *Bráhma* nuptials and the reſt goes to her huſband; but, in other forms of marriage, it devolves on her parents.

THUS the heir of the ſeveral ſorts of property held by a woman, who leaves no iſſue, is determined; on failure of her father and mother, and of her brother, all her property goes to her huſband, under the text of CA'TYA'YANA.

JI'MU'TAVA'HANA.

DXII.

CATYA'YANA:—ON failure of her parents and brothers, what

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huſband inherits, on failure of brothers, that wealth to which brothers have a demonſtrated title (DXII), ſo a brother inherits, on failure of the huſband, wealth to which huſbands have a demonſtrated title. Conſequently, texts, ſhowing the ſucceſſion of huſbands and the reſt, are adverſe to the claims of others while they are actually living, but do not contradict the ſucceſſion of others in order, upon failure of them: and thus, it muſt be affirmed by RAGHUNANDANA, that, in default of her huſband, a brother alone inherits wealth given to a woman by her huſband, although the ſon of her ſiſter in law be living. This is actually confeſſed by JI'MU'TAVA'HANA. Hence the text above cited (DIX) relates to wealth given by her father and the reſt; and indirectly to property given by her huſband, if ſhe ſurvive him; and to wealth received at the time of her marriage, if ſhe die after her huſband.

ON failure of the huſband and the reſt, *the following text is adduced.*

DXIII.

VRĬHASPATI:—The ſiſter of a mother, the wife of a maternal, or of a paternal, uncle, the ſiſter of a father, the mother of a wife, and the wife of an elder brother, are declared equal to a mother.

2. IF they leave no iſſue of their body, nor the ſon *of another wife of the huſband,* nor the ſon of a daughter, nor the *ſon's* ſon *of another wife,* the ſons of their ſiſters and ſo forth *ſhall therefore* inherit their property.

"ISSUE of their body;" ſon, daughter and the reſt, before mentioned. "Son;" the offspring of another wife of thehuſband. "Son of a daughter;" the daughters's ſon of another wife, who is the ſubject of a text above cited (CCCXCV). "Nor the ſon of him;" the ſon of another wife's ſon: but the daughter's ſon of another wife of the huſband is debarred from ſucceſſion, becauſe he confers no benefits. Conſequently the ſon and ſon's ſon of another wife inherit before the ſiſter's ſon and other ſix heirs; and the daughter's ſon inherits before the huſband, as his own daughter's ſon, and as

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offspring of a *Bráhmani* daughter; but after him, according to JI'MU'TAVA'HANA and the reſt, as abovementioned.

BUT others *thus interpret the text;* a ſon begotten in lawful wedlock, a daughter's ſon (and of courſe a daughter); his ſon, that is, the ſon of a ſon, or grandſon in the male line; and the huſband and other heirs ordained by expreſs texts, who are here underſtood from the connexion of the particle "nor;" on failure of all theſe, *we ſay*, a ſiſter's ſon and the reſt ſhall inherit in the order which will be mentioned, although the brother, the huſband's father and the reſt, and the ſon of another wife of the huſband and other claimants be living. Neither is the term "begotten in lawful wedlock" ſuperfluous as an epithet of ſon; for the ſon of another wife, and others, who are figuratively called ſons, muſt be excepted. Nor ſhould it be objected as a fault, that "ſon," to which the epithet is referred, becomes ſuperfluous. That form of expreſſion occurs in other texts (*for example*, "A ſon *begotten in lawful wedlock*, and one *begotten on the wife by a kinſman*, both ſhare the father's wealth"), and it excludes a remoter deſcendant of the body. Nor is it inconſiſtent with common ſenſe, that the ſon in law ſhould inherit, although the ſon of another wife of the huſband be living; for it muſt be borne, like the ſucceſſion of a ſon in law, although the brother, or the huſband's father, be living. As the huſband of a daughter is by VRIHASPATI figuratively called ſon, ſo is the ſon of another wife metaphorically called ſo by MENU. The *younger* brothers of a huſband, and the reſt, as well as the ſon of another wife, being conſidered as ſons, who ſhall firſt inherit? On this queſtion, if it be ſaid, the ſon of another wife ought to inherit firſt, in right of ſuperiour benefits conferred by him, becauſe he gives three principal funeral cakes which ſhould be offered by the ſon of a proprietor; the anſwer is, that is admiſſible; but he cannot claim ſucceſſion before the huſband, ſince he derives his title through him. It ſhould not be objected, that the huſband's brother and the reſt, deriving their title through *the father of the huſband, would not inherit while the father in law is* living. The ſucceſſion of the huſband's father and the reſt is not deduced from any other text. Nor ſhould it be argued, that he would have a prior title of inheritance, becauſe he has a right to perform the obſequies before the huſband. Such a maxim has been obviated, ſince the title of a ſiſter's

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ſon and the reſt to take the heritage has been propounded, even though the father in law, or other perſon qualified as a *ſapinda* to perform the obſequies, be living. The huſband's brother and the reſt, as well as his ſon by another wife, being equally conſidered as ſons, there is no authority to prove, that one ſhould inherit before the huſband, the reſt after him. Nor ſhould it be argued, that, the ſon of another wife being figuratively called ſon, when treating of thoſe who are ſecondarily ſo called, it is therefore acknowledged, that he redeems *his ſtepmother* from the hell named *put*, not *ſo* theſe ſons of a ſiſter, and the reſt, who are figuratively called ſons, merely that they may take the heritage: and thus they are not equal to a ſon of another wife. The huſband confers many more benefits than he. As for the remark, that her own ſon is ſuperiour to all others, ſolely becauſe he delivers her from the hell called *put*, that is futile; for, were it ſo, her own ſon and the child of another wife would have equal claims *to her inheritance*. If it be ſaid, her ſon has precedence, becauſe he performs both offices of redeeming *her father and huſband* from the hell called *put*, and thereby benefits the *family* of her own father and that of her huſband, the anſwer is, ſince the ſon of her ſiſter married to the ſame huſband with herſelf alſo performs both offices, he would have an equal claim with her own ſon, and would have precedence above the iſſue of any other wife of the huſband. and if her own ſon be acknowledged ſuperiour to both thoſe, who diſcharge the debt of offering a funeral cake to be ſhared by her in the double ſet of oblations, it cannot be affirmed, that his title is ſuperiour ſolely becauſe he delivers from the hell called *put*. Again, whatever claim the ſon of another wife may have, it is certainly true, that no argument exiſts to prove that the grandſon of another wife inherits before the huſband. Theſe authors ſo expound the law.

We reſume the ſubject. Have the ſons of ſiſters and the reſt a coordinate title, or a ſucceſſive one? Not the firſt, for aſſociation ſhould not be aſſumed, if ſucceſſive order be poſſible, and the ſons of a ſiſter, and others, of whom the daſignations are incompatible, ought not to be aſſociated. They ſhould therefore ſucceed in order as enumerated Accordingly the ſon of a ſiſter may be the firſt heir. It ſhould not be objected, that the reaſon of the law prevents this, becauſe the ſucceſſion of a ſon in law, while a brother

of

of the huſband exiſts, is contrary to rule. Since a ſon in law may regularly ſucceed, although an elder *brother of the huſband* be living, he may alſo regularly ſucceed in preference to a younger *brother of the huſband*: but, if the text be revered, the order of ſucceſſion ſtated therein muſt alſo be reſpected. Some authors ſo expound the law. But that is wrong; for it is improper, that one, who confers leſs benefits, ſhould inherit, while another, who confers greater benefits, other than that which is afforded to the woman herſelf by means of obſequies, is living.

SINCE her huſband's elder brother performs obſequies as a *ſapinda*, and the younger brother of the huſband confers equal benefits, a ſon in law and the reſt would not inherit while either of theſe exiſt: this ſhould not be affirmed. The younger brother of a huſband alſo preſenting the funeral cake as a *ſapinda*, he is again mentioned as a ſon *by fiction of law*, to ſhow that his oblation of the funeral cake is indiſpenſable: and thus it follows, that the huſband of a daughter, and others, mentioned in a ſingle text as heirs of a mother in law, who leaves no iſſue, and ſo forth, muſt neceſſarily offer the funeral cake. Conſequently the neceſſity of conferring benefits on the woman herſelf is the ſole cauſe why a ſon in law and the reſt rank above the elder brother of a huſband. It is therefore demonſtrably juſt, that a ſon in law and the reſt ſhould inherit, although the elder brother of the huſband, and other heirs, be living.

BUT others hold, that a ſon in law does not inherit, if the elder brother of the huſband be living; for he is not a kinſman connected by the funeral cake: but *he inherits* on failure of the huſband and other heirs who are expreſsly ordained by law, the ſucceſſion of thoſe, who *confer benefits, being deduced* from reaſoning. Among *ſapindas*, the younger brother of the huſband has the firſt claim; next the ſons of her huſband's elder and younger brothers; on failure of them, the ſon of the huſband's ſiſter; after him, in default of kinſmen within the degree of *ſapinda* or of *ſamánódaca*, including fourteen perſons aſcending and deſcending, the right of her father's kinſmen being *in that caſe* celebrated, the ſons of her brother or ſiſter inherit; next, on failure of kindred in the father's or mother's families, the huſband of a daughter; and laſtly, the higheſt of twice-born men.

THAT

THAT is denied; for, in the line of *ſapindas*, there is no proof, that the huſband's younger brother ſhall inherit firſt, although his father, who is nearer of kin, be living; nor, in the line of her father's kindred, that the ſons of her brother or of her ſiſter ſhall firſt inherit. If it be ſaid, they are preferable heirs becauſe they are her ſons *by fiction of law*; it muſt be remembered, that all *ſons, ſecondarily ſo called*, take the heritage immediately after a true ſon. Hence the method, approved by JI'MU'TAVA'HANA, ſhould be followed. It may be thus ſtated; the order of ſucceſſion correſponds with the degree of benefit conferred: firſt the huſband's younger brother inherits, becauſe he offers a funeral cake to her and to her huſband, and preſents oblations to three perſons, to whom cakes were to be offered by her huſband, and to two perſons, to whom they would have been offered by her ſon. After him, the ſons of her huſband's younger and elder brothers inherit together; becauſe they offer the funeral cake to her and to her huſband, to two perſons, to whom oblations would have been preſented by her ſon, and to two perſons, to whom funeral cakes were to be offered by her huſband. On failure of thoſe, the ſon of her ſiſter *inherits*, becauſe he offers the funeral cake to her, and to three perſons, the maternal grandfather and the reſt, to whom oblations would have been preſented by her ſon. After him, the ſon of her huſband's ſiſter ſucceeds, becauſe he offers the funeral cake to her, and to three perſons, her father in law and the reſt, to whom oblations were to be preſented by her huſband. Since the huſband has a weaker claim than the ſon, it muſt be inferred, that he, who performs rites incumbent on her huſband, has a weaker claim, than he who fulfils duties incumbent on her ſon; this order of ſucceſſion is therefore right. So JI'MU'TAVA'HANA and RAGHUNANDANA.

BUT the ſon of her huſband's ſiſter alſo performs rites incumbent on her ſon, for he performs the *śrádd'ha* for the paternal grandfather and other anceſtors of her ſon, and of his father. Yet the ſon of her huſband's ſiſter, performing rites incumbent on both, has not a ſtronger claim than he, who merely performs thoſe which were incumbent on her ſon. It ſhould not be anſwered, that, according to RAGHUNANDANA, her ſiſter's ſon has a ſtronger claim than the ſon of her huſband's ſiſter, becauſe he ſatisfies ſix anceſtors of her ſon including the maternal grandmother and the reſt, while the other ſatisfies four anceſtors of her ſon, the paternal grandfather and grandmother and the

reſt.

reſt. The ſon of her huſband's ſiſter is ſuperiour, becauſe he ſatisfies ſix anceſtors of her huſband, namely his father and the reſt, and his mother and ſo forth. Nor ſhould it be argued *on the other hand*, that his claim is completely eſtabliſhed in right of his ſatisfying thoſe ſix perſons. He, who contents four perſons, who ought to be ſatisfied by her ſon, is inferiour to him, who contents ſix perſons, who ought to be ſatisfied by the ſame.*

As for the obſervation, that a ſiſter's ſon, performing rites incumbent on a brother, has a ſuperiour claim, becauſe a brother has a ſtronger title under a text above cited (CCCCXCIII 2), that is not appoſite in the caſe of wealth received at the time of marriage in the form called *Bráhma* and ſo forth; for, in ſuch inſtances, the huſband has the ſtronger title.

Since the line of maternal anceſtors is not chiefly conſidered, the ſon of the huſband's ſiſter, offering the funeral cake to the ſon's paternal anceſtors, ought to be firſt heir under the rule, that, on the competition of chief and ſubordinate *claimants*, the office devolves on the chief perſon. Again; the ſon of the huſband's ſiſter alſo confers favours on the huſband, who is one of two perſons conſtituting one body. This alſo may be objected.

in-law's great grandſon in the male line, becauſe he is the neareſt *ſapinda*; after him, the paternal grandfather of her huſband, or his iſſue; next the paternal great grandfather of her huſband, or his offſpring; and ſo forth, including fourteen perſons aſcending and deſcending; after theſe, her kindred on her father's ſide, as far as the tenth perſon; after them, the family of her mother; and laſtly, the king *takes the eſtate*, except the property of a *Bráhmaní* woman. This brief expoſition *may ſuffice*.

THE ground of this *order of ſucceſſion* is the performance of obſequies; for it is ſhown, in the caſe of property left by a man, that heirs ſucceed in right of benefits conferred. On this ſubject

DXIV.

The *Viſhnu purána*:—A SON, a ſon's ſon, the ſon of a grandſon, or like them a brother or his offſpring, or a *ſapinda* or his iſſue, become entitled, O king! to perform *funeral* rites:

2. On failure of all theſe, the offſpring of a *ſamánódaca*; or, *after them*, kinſmen on the mother's ſide connected by the funeral cake or by oblations of water.

3. BUT, if both families be extinct, the rites, O king! muſt be performed by women; or the obſequies for the deceaſed muſt be celebrated by intimate companions:

4. Let the king cauſe obſequies to be performed for him, who leaves no kinſmen nor wealth.

The ſame:—BY the *ſapindas* and *ſamánódacas* of the father and mother, by intimate companions, or by the king, who takes an eſcheat,

6. The firſt rites muſt be performed; but the laſt rites ſhall only be celebrated by ſons and the reſt.*

* The firſt funeral ceremony is the cremation of the corpſe: the middle rites conſiſt in gathering the aſhes and performing the obſequies for a perſon recently deceaſed: theſe extend to the firſt annual *ſráddha*: the laſt rites are the monthly, annual, and other obſequies for anceſtors long ſince dead. T.

FIRST a brother, next his offspring: the appoſition of the terms is in the ſenſe of aſſociation; 'a brother with his offspring:' and the deſcendants of a brother perform obſequies according to *the degree* of proximity. Next a *ſapinda*, namely a father and the reſt, and their iſſue, including females, *that is*, the wife of a ſon and ſo forth. After them, the offspring of a *ſamánódaca*, as mentioned in a text of law, "the relation of the *ſamánódacas*, or thoſe connected by an equal oblation of water, ceaſes with the fourteenth perſon." Next, *ſapindas* and *ſamánódacas on the mother's ſide*. If both families, that of the father, and that of the mother, be extinct, obſequies ſhall be performed by women, meaning daughters of the family and the reſt; on failure of all theſe, by intimate companions, that is, by friends; in default of them, by the king: *but*, ſince he cannot officiate in perſon, he muſt cauſe obſequies to be performed by the intervention of ſome man equal in claſs.

"THE laſt rites," ſubſequent to the firſt annual obſequies, that is, *other* annual *śrádd has* and ſo forth. In like manner, women alſo requiring obſequies, the right of performing for them ceremonies relative to another world ſhould follow the ſame order. But in this caſe the terms, "a brother or his offspring," are not appoſite; for theſe are not *ſapindas of a married woman*: the order muſt therefore be underſtood with the omiſſion of them. On failure of kindred within the degree of a *ſamánódaca*, the father and the reſt, (meaning his kinſmen), *perform obſequies*, under the text *above cited* (DXIV 5). So RAGHUNANDANA; but according to others, becauſe reaſoning ſhows the kindred of her father to be more venerable than thoſe of her mother. On failure of them, the kindred of the mother, and the moſt exalted of twice born men, are qualified to perform obſequies for the deceaſed, under the text, "on failure of them, the higheſt twice-born man." They inherit the eſtate becauſe they confer benefits.

ALTHOUGH women, included among theſe *remote heirs*, may perform funeral rites for the deceaſed, under the text of the *Viſhnu purána*, "on the anniverſary of deceaſe, the laſt rites may be performed even by women;" they do not ſhare the property, for a text expreſſes, "diſtribute not wealth among women, ignorant men, and ſuch as neglect their duties."

OTHERS

OTHERS hold, that the claim of a ſiſter's ſon and the reſt follows immediately after that of the woman's own iſſue, becauſe they are declared equal to a ſon; their claim, as before, *is regulated* by the degree in which they perform rites incumbent on a ſon: elſe, there could be no certainty, when theſe perſons, not mentioned in the *Viſhnu purána*, would have a right to perform funeral rites.

RAGHUNANDANA affirms, that, on failure of heirs including kinſmen bearing the ſame family name, the father is firſt qualified to perform the funeral rites for a woman; on failure of him, her brother; next the ſon of her own ſiſter, of her huſband's ſiſter, of her brother, and laſtly the huſband of her daughter, under the text of ṢA'TA'TAPA: *after theſe* the maternal uncle and the pupil of her huſband claim that right; and laſt of all, other kindred of her father.

DXV.

ṢA'TA'TAPA:—A MATERNAL uncle *ſhall perform the obſequies* of his ſiſter's ſon; and a ſiſter's ſon, the obſequies of his maternal uncle; *a ſon in law, the funeral rites* of his father-in-law; *a pupil, thoſe* of his ſpiritual teacher; *a grandſon, the obſequies* of his maternal grandfather.

2. THE funeral cake muſt be offered to their wives and ſiſters, to their mothers and fathers; this is a rule ſettled by lawgivers verſed in holy writ.

ACCORDING to his opinion, a ſimilar order ſhould be underſtood in ſucceſſion to property. Such is the inheritance of ſeparate wealth *left by* a married woman: however, land, given by her huſband, does not devolve on the heirs of her ſeparate property, but on thoſe of her huſband's, under the text above cited (CCCCLXXVII 2); for this follows of courſe, ſince the precept would be unmeaning, were the heirs of the woman intended: the legal heirs of her huſband muſt therefore be underſtood. This text is expounded by authors as relating to an eſtate devolving on a wife *by failure of male iſſue*. Wealth, poſſeſſed as property in right of relation

or

given by her huſband, and in regard to other ſorts of property held by a woman as owner thereof. In anſwer to the queſtion, what is the rule reſpecting immoveables given by her huſband, and other ſorts of property poſſeſſed by her? this text is cited; and the gift or heritage *(dáya)* of her huſband there ſignifies his wealth, that is, the property of the wife formerly belonging to him. It follows from the epithet "*received* from her huſband," that ſhe has independent power over wealth devolving on her from her father and the reſt by failure of nearer heirs.

But Misra holds, that ſhe is alſo ſubject to control in reſpect of immoveable property deſcending to her from her huſband through the intervention of her ſon, in other words, property of a ſon devolving on his mother. Ji'mu'tava'hana and the reſt affirm, that a woman is ſubject to control in reſpect of wealth any how devolving on her alone. Thus "childleſs," in the text above cited, ſuppoſes property deſcending to her by failure of nearer heirs. Conſequently immoveables, even though given by her huſband, ſhall be taken by *his* heirs only.

A husband having independent power by the text of Ca'tya'yana (CCCCLXX), over wealth acquired by his wife during coverture, and a father being alſo owner of wealth earned by his unmarried daughter (for the word ſon, in the text of Menu, Book III, Ch. I, v. LII 1, ſignifies both ſon and daughter, ſince it is not determinately reſtricted to the *maſculine* gender;) what is the rule concerning property acquired by a widow? It ſhould not be anſwered, her brother is ſole heir, becauſe none can conteſt his claim, ſince her huſband, the *only* obſtacle to his ſucceſſion, is dead. The brother is pronounced heir to that wealth only, which was given by her parents (DIX). To the queſtion thus propoſed, the anſwer is, no; for it has been already mentioned, that the huſband, mother, and brother are, in every inſtance, heirs, on *failure of opponents*.

Again; according to the opinion of thoſe, who contend that the legal heirs of the daughter ſucceed, on her demiſe, to the eſtate of her father which had devolved on her, wealth, deſcending to a woman in default of nearer heirs, is her peculiar property. Even in that caſe the rule of deciſion is this;

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the mention of the ſix fold property of women, eſtabliſhed by authors to be an exception of fewer diſtinctions, relates to property, over which they univerſally have independent power by the tenour of the precept. For the eſtate of her father, though devolving on his daughter after her marriage, becomes the property of her huſband, ſince he is declared by the text above cited (Book III, Ch. I, v. LII 1) to have dominion over *all* her property excepting the ſix ſorts ſpecified: but that precept does not relate to the peculiar poſſeſſions of a woman, ſince it is oppoſed by a ſeparate text. Thus wealth, received a few days before marriage, is not the peculiar property of a woman in the technical acceptation of the term, although ſhe have independent power over it. In like manner, ſince the huſband has in ſome inſtances dominion over wealth acquired by his wife, a widow has not univerſally an uncontroled power over her own acquiſitions in general, although ſhe ſometimes have ſuch power. Here again, although the huſband have a title in the wealth acquired by his wife during coverture, his ownerſhip is ſubject to the control of his wife; after his death, it ſhall be enjoyed by her alone; but, if ſhe die *before him*, it ſhall be taken by the legal heirs of her huſband: the regular claimants of a woman's ſeparate property have no right in this inſtance. If her huſband die firſt, her *acquired* wealth becomes the ſole property of this woman, who earned it; in that caſe, it ſhall be taken by the legal heirs of her peculiar effects: but, if the wife die firſt, her wealth becomes the ſole property of her huſband, and ſhall therefore be taken, *after his demiſe*, by his legal heirs. If partition be made during the life *of the married pair*, ſuch wealth ſhall be divided between them, according to the opinion of thoſe, who contend for partition between huſband and wife: the ſons obtain no ſhare of it, *ſince no text ordains their participation*. This ſhould be admitted, becauſe legiſlators have delivered no other rule concerning wealth acquired by women; becauſe the huſband is declared to have dominion over it; and becauſe the father and ſon are obſerved to ſhare the wealth which is acquired by the ſon. Thus ſome authors expound the law.

But, according to Ji'mu'tava'hana, Raghunandana and the reſt, the wife is ſole owner of wealth acquired by her, even during coverture; yet ſhe has not independent power over it, ſo long as her huſband lives: *for* the negative

negative in the text of MENU (Book III, Ch I, v LII 1) conveys the ſenſe of imperfection. Conſequently they have no wealth excluſively their own, and the imperfection *of their property* conſiſts in the want of uncontroled power. It muſt be therefore underſtood, that the legal heirs of a woman's peculiar property ſucceed alſo to this wealth. Although it be ſuggeſted, that the ſame ſhould be likewiſe affirmed in reſpect of her father's eſtate devolving on a daughter *by failure of nearer heirs*, ſtill we do not inveſtigate this *claim*, becauſe it is aſſerted by JIMUTAVAHANA and RAGHUNANDANA, that the legal heir of her father ſucceeds to that eſtate.

A DAUGHTER may at pleaſure give away to any perſon whomſoever the excluſive property of her mother, which has devolved on her, after her death, the daughter's ſon in law and the reſt ſhall obtain that, *which has not been alienᵉd*. It ſhould not be argued, that a daughter is only permitted to enjoy for life the peculiar property of a woman, *which ſhe has inherited*, like the eſtate left by a man, *to which ſhe has ſucceeded*. That has not been aſſerted by JIMUTAVAHANA, and no reaſoning ſupports it.